

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

<b>EDDIE OGLETREE, and individual,</b>	)	
<b>GERAL STEPHENS, an individual,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	<b>CV: 3:07-cv-867-WKW</b>
<b>v.</b>	)	
	)	
<b>CITY OF AUBURN, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	
<b>CWH RESEARCH, INC.,</b>	)	
	)	

**CWH, INC.'S MOTION FOR SUMMARY JUDGMENT**

CWH, Inc. ("CWH") moves the Court for judgment in its favor on all claims brought against CWH by the City of Auburn pursuant to Rule 56. Based on the pleadings on file and the depositions of Eddie Ogletree, Gerald Stephens, Steven Reeves, Lee Lamar, Larry Langley, and William Howard James, all of which are attached hereto as Exhibits A through E, respectively, there are no genuine issues of material fact and CWH is entitled to judgment as a matter of law.

/s/ William K. Hancock  
William K. Hancock

Attorney for CWH Research, Inc.

OF COUNSEL:

ADAMS & REESE LLP  
2100 3rd Avenue North, Suite 1100  
Birmingham, AL 35203  
Telephone: (205) 250-5000  
Facsimile: (205) 250-5034

**CERTIFICATE OF SERVICE**

I hereby certify that on August 11, 2008, I electronically filed same using the CMEF system which will electronically notify all attorneys of record.

Richard F. Horsley  
King, Horsley & Lyons, LLC  
1 Metroplex, Suite 280  
Birmingham, AL 35209

Randall Morgan  
Hill Hill Carter  
P.O. Box 116  
Montgomery, AL 36101-0116

/s/ William K. Hancock  
OF COUNSEL



**DEPOSITION OF GERALD STEPHENS**

**May 30, 2008**

**Pages 1 through 251**

**PREPARED BY:**

**Haislip, Ragan, Green, Starkie & Watson, P.C.**

**566 South Perry Street**

**Post Office Box 62**

**Montgomery, AL 36104**

**Phone: (334) 263-4455**

**Fax: (334) 263-9167**

**E-mail: [haislipragan@charter.net](mailto:haislipragan@charter.net)**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

EDDIE OGLETREE, an individual,  
GERALD STEPHENS, an  
individual,

Plaintiffs,

Vs.

CIVIL ACTION NO.  
3:07-CV-867-WKW

CITY OF AUBURN, a municipality  
in The State of Alabama, LARRY  
LANGLEY, and individual, LEE LAMAR,  
an individual, BILL HAM, JR., an  
individual, STEVEN A. REEVES, an  
individual, BILL JAMES, an  
individual, CHARLES M. DUGGAN, an  
individual, and CORTEZ LAWRENCE,  
an individual,

Defendants.

\* \* \* \* \*

DEPOSITION OF GERALD STEPHENS, taken pursuant  
to stipulation and agreement before Pamela A. Wilbanks,  
Certified Court Reporter, ACCR# 391, Registered  
Professional Reporter and Commissioner for the State of  
Alabama at Large, in the Law Offices of Hill, Hill,  
Carter, Franco, Cole & Black, 425 South Perry Street,  
Montgomery, Alabama, on Friday, May 30, 2008, commencing

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<p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFFS:</p> <p>3 Mr. Richard F. Horsley</p> <p>4 KING, HORSLEY &amp; LYONS</p> <p>5 Attorneys at Law</p> <p>6 1 Metroplex Drive</p> <p>7 Suite 280</p> <p>8 Birmingham, AL 35209</p> <p>9 FOR THE DEFENDANTS:</p> <p>10 Mr. Randall Morgan</p> <p>11 HILL, HILL, CARTER, FRANCO, COLE &amp; BLACK</p> <p>12 Attorneys at Law</p> <p>13 425 South Perry Street</p> <p>14 Montgomery, Alabama</p> <p>15 FOR CWH:</p> <p>16 Mr. William K. Hancock</p> <p>17 ADAMS &amp; REESE</p> <p>18 Attorneys at Law</p> <p>19 Suite 1100</p> <p>20 2100 Third Avenue North</p> <p>21 Birmingham, AL 35203</p> <p>22 ALSO PRESENT:</p> <p>23 Mr. Eddie Ogletree</p> <p>Mr. Steven Reeves</p> <p>Mr. Lee Lamar</p> <p>*****</p> <p>EXAMINATION INDEX</p> <p>BY MR. MORGAN ..... 5</p> <p>BY MR. HORSLEY ..... 237</p> <p>BY MR. MORGAN ..... 242</p> <p>*****</p>	<p>1 STIPULATION</p> <p>2 It is hereby stipulated and agreed by and</p> <p>3 between counsel representing the parties that the</p> <p>4 deposition of GERALD STEPHENS is taken pursuant to the</p> <p>5 Federal Rules of Civil Procedure and that said</p> <p>6 deposition may be taken before Pamela A. Wilbanks,</p> <p>7 Registered Professional Reporter and Commissioner for</p> <p>8 the State of Alabama at Large, without the formality of</p> <p>9 a commission, that objections to questions other than</p> <p>10 objections as to the form of the question need not be</p> <p>11 made at this time but may be reserved for a ruling at</p> <p>12 such time as the said deposition may be offered in</p> <p>13 evidence or used for any other purpose by either party</p> <p>14 provided for by the Statute.</p> <p>15 It is further stipulated and agreed by and</p> <p>16 between counsel representing the parties in this case</p> <p>17 that the filing of said deposition is hereby waived and</p> <p>18 may be introduced at the trial of this case or used in</p> <p>19 any other manner by either party hereto provided for by</p> <p>20 the Statute regardless of the waiving of the filing of</p> <p>21 the same.</p> <p>22 It is further stipulated and agreed by and</p> <p>23 between the parties hereto and the witness that the</p>
Page 3	Page 5
<p>1 DEFENDANTS' EXHIBIT INDEX</p> <p>2 1 Copy of posting for the position of 78</p> <p>3 Battalion Chief</p> <p>4 2 Copy of memo sent by e-mail dated 2/17/06 78</p> <p>5 to all personnel from Mr. Lamar concerning</p> <p>6 the Battalion Chiefs Assessment</p> <p>7 3 Copy of memo sent by e-mail dated 2/23/06 80</p> <p>8 to all career personnel from Chief Langley</p> <p>9 concerning the Battalion Chiefs Assessment</p> <p>10 4 Sign-in sheet for the Battalion Chief 83</p> <p>11 Assessment Orientation dated 2/28/06</p> <p>12 5 Copy of Auburn Fire Division Orientation 87</p> <p>13 Manual</p> <p>14 6 Copy of 3/3/06 letter to the Battalion 100</p> <p>15 Chief candidates from Mr. Lamar</p> <p>16 7 Auburn Fire Division Battalion Chief 100</p> <p>17 Reading List Check-out Sheet, 3/3/06</p> <p>18 8 Auburn Fire Division Battalion Chief 100</p> <p>19 Reading List Check-out Sheet, 3/3/06</p> <p>20 9 Mr. Stephens' application for the 104</p> <p>21 promotion to Battalion Chief</p> <p>22 10 Copy of 4/4/05 letter to Mr. Stephens from 125</p> <p>23 Steve Reeves</p> <p>11 Copy of 4/14/06 letter to Mr. Stephens from 127</p> <p>Stephanie King</p> <p>12 Copy of 4/21/06 letter to Mr. Chief Lamar 128</p> <p>from Mr. Clanton, Mr. Hodge, Mr. Ogletree</p> <p>and Mr. Stephens</p> <p>13 Copy of the Charge of Discrimination 188</p>	<p>1 signature of the witness to this deposition is hereby</p> <p>2 waived.</p> <p>3 *****</p> <p>4</p> <p>5 GERALD STEPHENS</p> <p>6 The witness, after having first been duly sworn</p> <p>7 to speak the truth, the whole truth and nothing but the</p> <p>8 truth testified as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. MORGAN:</p> <p>11 Q. State your name, please.</p> <p>12 A. My name is Gerald Stephens.</p> <p>13 Q. And Mr. Stephens, where do you live?</p> <p>14 A. I live in Auburn, Alabama.</p> <p>15 Q. What is your address?</p> <p>16 A. My address is 828 Cahaba Drive, Auburn, Alabama</p> <p>17 36830.</p> <p>18 Q. And who do you live with there?</p> <p>19 A. I live with my wife and my son.</p> <p>20 Q. What is your wife's name?</p> <p>21 A. My wife name is Richetta, R-I-C-H-E-T-T-A.</p> <p>22 Q. And your son's name?</p> <p>23</p>

Page 6	Page 8
1 Q. Richetta, where does she work?	1 Q. Let me just send an interrogatory.
2 A. Richetta works with Media General, which is a	2 Are your parents still living?
3 company that oversees the Opelika-Auburn News of	3 A. My mother is. My father is deceased.
4 Opelika.	4 Q. Where does your mother work, if she does?
5 Q. And how old is your son Jameson?	5 A. My mother is retired.
6 A. My son Jameson is four years old.	6 Q. From where?
7 Q. Do you have any ex-wives?	7 A. She was in child care. She worked in several
8 A. No, sir, I don't.	8 different places. The last place she worked was
9 Q. Got any other children?	9 First Baptist Church.
10 A. Yes, sir, I do.	10 Q. And what is her name?
11 Q. And their names and ages?	11 A. Dorothy Stephens.
12 A. I have one daughter. She's 17 years old. Her	12 Q. And your father's name?
13 name is Tarnesha, T-A-R-N-E-S-H-A.	13 A. James.
14 Q. And where does she live?	14 Q. And where was his last employment?
15 A. She also lives in Auburn.	15 A. Post Office of Auburn, Alabama. U.S. Postal
16 Q. Does she attend high school there?	16 Service.
17 A. Yes, sir, she does.	17 Q. Do you have any brothers?
18 Q. Which high school?	18 A. I do.
19 A. Auburn High School.	19 Q. That live in Lee County?
20 Q. Who is her mother?	20 A. Yes, sir.
21 A. Her mother name is Tasha Smith.	21 Q. How many?
22 Q. Where does Tasha live?	22 A. I have two brothers -- three brothers -- I'm
23 A. She also lives in Auburn.	23 sorry -- that live in Lee County.
Page 7	Page 9
1 Q. Where does she work?	1 Q. Just give me their names.
2 A. Last I recall she works at Lambert Child Care of	2 A. Terry Byrd. B-Y-R-D, last name. Russell Byrd
3 Auburn.	3 and Clemmon Byrd.
4 Q. This case is in federal court, and I guess	4 Q. Where does Terry work?
5 probably the easiest thing would be to send some	5 A. He's disabled at this time. He doesn't work
6 interrogatories. But I'm going to ask you if	6 anymore.
7 you've got any relatives in any of these	7 Q. Russell?
8 counties.	8 A. He's disabled as well.
9 Do you have any relatives by blood or	9 Q. And Clemmon?
10 marriage in Lee County?	10 A. Clemmon is a police officer of the City of
11 A. Yes, sir, I do.	11 Auburn, police division.
12 Q. How about Chambers County?	12 Q. And are they married?
13 A. No, sir.	13 A. Clemmon is.
14 Q. Macon County?	14 Q. What's his wife's name?
15 A. No, sir.	15 A. Allison.
16 Q. Randolph County?	16 Q. Where does she work?
17 A. No, sir.	17 A. I think she works with Mental Health of Lee
18 Q. Russell County?	18 County, if I'm not mistaken.
19 A. No, sir.	19 Q. What's her maiden name?
20 Q. Tallapoosa County?	20 A. I'm not really sure about that, Mr. Morgan.
21 A. No, sir.	21 Q. Got any sisters?
22 Q. How many relatives do you have in Lee County?	22 A. I do.
23 A. Several.	23 Q. How many sisters?

Page 10	Page 12
1 A. One sister.	1 A. I am a member -- I'm sorry.
2 Q. And her name is ...	2 Q. -- political organizations in Lee County or any
3 A. Cassandra Stephens Pitts.	3 of these other counties?
4 Q. Where does she work?	4 A. I am a member of an organization by the name of
5 A. She works in Montgomery.	5 People of Action for Community Enrichment. The
6 Q. What does she do over here?	6 icon on that is PACE, and it is of Lee County.
7 A. She works with the IRS Department of the State.	7 Q. What kind of group is that? What do they do?
8 Q. And her husband's name, if she has one?	8 A. It's a social communication where we implement
9 A. She's divorced, but her ex-husband name is	9 youth development and educational skills. We
10 Robert Pitts.	10 oversee our organization, which is a reading
11 Q. And where does he live and work?	11 club, to induce basically educational skills for
12 A. He works in Opelika. He lives in Auburn.	12 growing youth.
13 Q. What does he do in Opelika?	13 Q. Is that a mixed race group?
14 A. He works at the UniRoyal Plant.	14 A. Yes, sir, it is.
15 Q. Are you a member or do you regularly attend a	15 Q. Where is it located? Does it have an address?
16 church?	16 A. We meet monthly in Opelika. We don't have a
17 A. Yes, sir, I do.	17 general area where we consider to be a part of.
18 Q. What is that church?	18 Q. Are there any other Auburn firefighters that are
19 A. My church home is Ebenezer Baptist Church of	19 members of that club?
20 Auburn.	20 A. No, sir, not that I'm aware of.
21 Q. Do you attend another church?	21 Q. Are you a member of the NAACP?
22 A. Mr. Morgan, I attend several churches in the	22 A. No, sir.
23 City of Auburn. I attend my wife's church,	23 Q. Have we covered all your clubs, civic, political
Page 11	Page 13
1 which is St. Luke CME, also of Auburn.	1 organizations?
2 Q. Okay.	2 A. (Witness nods head positively.)
3 A. I attend Auburn United Methodist Church, which	3 Q. Any others?
4 is also of Auburn. And I also attend Greater	4 A. Not that I'm aware of at this time, sir.
5 Peace Baptist Church, which is in Opelika,	5 Q. Or any that you've been a member of, say, within
6 Alabama.	6 the last five years that you're no longer a
7 Q. But you are officially a member of Ebenezer?	7 member of?
8 A. Yes, sir.	8 A. I am a part of a Masonic organization, if that
9 Q. And I assume you attend St. Luke's because your	9 would apply to it or whatever.
10 wife goes there?	10 Q. Okay. Where is it located?
11 A. Yes, sir. Wife and son.	11 A. Auburn.
12 Q. What about these other two: Auburn United	12 Q. What's the name of it?
13 Methodist and Greater Peace?	13 A. Milton W. Howze, H-O-W-Z-E. Lodge Number 408.
14 A. Those are just neighboring churches in the	14 Q. And what does that organization do?
15 community that I'm affiliated with the people	15 A. Community involvement as far as -- Basically
16 that go there and the ministers. So I attend	16 what we do is just help out in the community,
17 them on a regular basis.	17 help local businesses, fundraisers, anything
18 Q. Do you hold any position in any of these	18 that pretty much enhances the community.
19 churches?	19 Q. Have you, other than this lawsuit, been a
20 A. No, sir.	20 plaintiff, sued anyone else, other than this
21 Q. Deacon or anything like that?	21 lawsuit?
22 A. No, sir.	22 A. No, sir, not that I can recall.
23 Q. Are you a member of any clubs, civic, social --	23 Q. Have you ever been sued by anybody?



Page 14	Page 16
1 A. No, sir.	1 A. No, sir.
2 Q. Ever been in bankruptcy?	2 Q. Any other formal education?
3 A. No, sir.	3 A. Yes, sir. I attended several junior colleges:
4 Q. Have you ever had any judgments against you for	4 Southern Union, Chattahoochee Valley State
5 anything?	5 Community College, Shelton State Community
6 A. In reference to -- Just in particular?	6 College, Alabama State Fire College.
7 Q. Anything. Loans, collections --	7 Q. Is that at Shelton State or is that separate?
8 A. No, sir.	8 A. Yes, sir. That's through Shelton State in
9 Q. -- cases? Anything?	9 Tuscaloosa.
10 A. No, sir.	10 Q. In terms of Southern Union, did you receive a
11 Q. Have you ever been arrested?	11 diploma, certificate or anything from that or
12 A. In my early years, yes, sir.	12 were you attending courses related to your fire
13 Q. What for?	13 work?
14 A. I had a driving violation, 16 years old.	14 A. Courses related to my fire work.
15 Q. Like a speeding ticket?	15 Q. And how about Chattahoochee Valley? Same thing?
16 A. DUI.	16 A. Courses related to my fire work.
17 Q. Anything else?	17 Q. Shelton State?
18 A. Other than speeding tickets. From that point	18 A. Yes, sir. Courses related to my fire work.
19 on, no, sir.	19 Q. And the Alabama Fire College, is that something
20 Q. And any convictions? Were you convicted of the	20 that all firefighters attend or do you have to
21 DUI?	21 be selected to attend the Alabama Fire College?
22 A. Yes, sir, I was.	22 How does that work at Auburn?
23 Q. Any other convictions other than that?	23 A. As far as I've been working there, it was an
Page 15	Page 17
1 A. No, sir.	1 opportunity for firefighters to go and to better
2 Q. Tell me about your educational background.	2 enhance themselves as far as the fire
3 You're a high school graduate?	3 professional field and career.
4 A. Yes, sir.	4 Q. Do you have to attend the Alabama Fire College
5 Q. Where did you graduate from?	5 as an employee of Auburn Fire Department?
6 A. Auburn High School.	6 A. Yes, sir, I do.
7 Q. What year?	7 Q. So all firefighters, once they are hired and
8 A. 1990.	8 become, I guess, non-probationary, they have to
9 Q. Have you attended college or junior colleges?	9 attend the fire college?
10 A. Yes, sir.	10 A. Yes, sir. In order to be employed with the
11 Q. Where have you been?	11 Auburn Fire Division, to my understanding you
12 A. Auburn University.	12 must undergo several weeks of training which
13 Q. What year did you start?	13 comes from the State Fire College through
14 A. 1990.	14 certifications and all that.
15 Q. And did you complete it?	15 Q. Now, are there state-required minimum standards
16 A. No, sir. 1992. I did two years at Auburn	16 for firefighters before you can be hired?
17 University.	17 A. Before?
18 Q. What was your course of study?	18 Q. Yes. Or as part of your hiring process.
19 A. Business.	19 A. Not before, no. And I'm only speaking from my
20 Q. And what was the reason why you did not complete	20 experience. When I was hired I underwent
21 it?	21 educational and physical training through the
22 A. I had a child at the time, and I needed to work.	22 State Fire College at that point. It was not
23 Q. Did you have any academic problems?	23 prior to.

Page 18	Page 20
1 Q. Okay. In order to be certified in the state of	1 courses in?
2 Alabama as a firefighter, do you have to	2 A. Southern Union and Chattahoochee Valley.
3 complete certain things?	3 Q. Did you receive a certificate or diploma or
4 A. Yes, sir.	4 complete the coursework academically at either
5 Q. And what do those include?	5 Southern Union or Chattahoochee?
6 A. I had to complete Firefighter I certification.	6 A. I have my grades and records to show that I
7 Q. And where did you do that?	7 attended those, but certification-wise, not
8 A. The training was conducted in Lee County at the	8 during that period of time.
9 Opelika training grounds through my employer.	9 Q. What I'm asking is -- Usually, I guess, if you
10 Q. Are you a veteran?	10 go two years, you get some sort of certificate
11 A. No, sir.	11 at the end: I've completed this course of study
12 Q. No time in the military?	12 at a junior college. Did you ever achieve that
13 A. No, sir.	13 from either Southern Union or Chattahoochee?
14 Q. When were you first employed with the City of	14 A. No, sir.
15 Auburn?	15 Q. But that allowed you to stay on as a student
16 A. I was first employed in 1991.	16 firefighter?
17 Q. Now, were you a student firefighter?	17 A. Yes, sir.
18 A. Yes, sir, I was.	18 Q. What did you do to become a regular firefighter?
19 Q. And tell me what you had to do to be a student	19 A. I submitted an application.
20 firefighter.	20 Q. And I assume you were hired?
21 A. Of course, I had to submit an application. And	21 A. Yes, sir.
22 once selected I had to undergo several weeks of	22 Q. According to my notes, I've got that you were
23 training, what they consider to be a rookie	23 hired January 17, 1994. Is that about right?
Page 19	Page 21
1 school.	1 A. That was my first day on shift. I was
2 Q. Who would be your supervisor when you were a	2 actually -- According to my state retirement
3 student firefighter?	3 records and all that, I officially started
4 A. My immediate supervisor was a team leader.	4 January 1st.
5 Q. Do you remember who?	5 Q. Of '94?
6 A. If I'm thinking correctly, my first team leader	6 A. Yes, sir.
7 was by the name of Ronald Blankenship.	7 Q. Speaking of retirement, do you get time credited
8 Q. And how long did you remain a student	8 on your retirement for the period when you were
9 firefighter?	9 a student firefighter?
10 A. Three years.	10 A. I didn't ever get any, no, sir.
11 Q. That would have been up till about '94?	11 Q. Do they do that now?
12 A. Yes, sir.	12 A. Yes, sir.
13 Q. And then you became a ...	13 Q. So did they go back and pick up your three
14 A. Career firefighter, yes, sir.	14 years?
15 Q. If you left Auburn in -- the university in '92,	15 A. Well, I was given an opportunity to do that, but
16 how did you remain a student firefighter up	16 I didn't.
17 through '94?	17 Q. You would have had to have pay in, I guess?
18 A. I went to Auburn University for two years, and	18 A. Yes, sir.
19 then after that I started taking courses through	19 Q. We talked about training, going to the Alabama
20 the junior colleges.	20 Fire College and the Firefighter I training you
21 Q. Academic courses or fire-related courses?	21 received in Lee County. Did you have to undergo
22 A. Both.	22 any additional training to be a career
23 Q. What junior colleges did you take academic	23 firefighter from what you had already received

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<p>1 as a student firefighter?</p> <p>2 A. Yes, sir. I underwent a lot of training that</p> <p>3 was basically voluntary that I chose to pursue</p> <p>4 on my own.</p> <p>5 Q. Let me back up.</p> <p>6 As a requirement -- I assume when you were</p> <p>7 hired as a student firefighter, you had to have</p> <p>8 fire training just like anybody else.</p> <p>9 A. Yes, sir.</p> <p>10 Q. Did you have to have any additional required</p> <p>11 training when you made the transition from</p> <p>12 student to career?</p> <p>13 A. Yes, sir. I had to -- Within a year I had to</p> <p>14 pass a course or certification of Firefighter</p> <p>15 II. And I can't remember how many years later,</p> <p>16 but I was required to pass an apparatus operator</p> <p>17 certification.</p> <p>18 Q. And I assume you did all that without any</p> <p>19 problem?</p> <p>20 A. Yes, sir. No problems.</p> <p>21 Q. Other than the fire department or fire division</p> <p>22 with City of Auburn, have you had -- between</p> <p>23 high school and becoming a career -- what I call</p>	<p>1 charges?</p> <p>2 A. No, sir, I haven't. Other than the two you've</p> <p>3 spoken of.</p> <p>4 Q. And in the grievances, I'm aware that you filed</p> <p>5 a grievance after the battalion chief promotion</p> <p>6 procedure. Have you filed any other grievances</p> <p>7 with the City of Auburn?</p> <p>8 A. I have initiated grievances, but I've never</p> <p>9 completed them. Well, I didn't complete those</p> <p>10 that were initiated. After going through the</p> <p>11 procedures that are in place with the City, it</p> <p>12 was handled through the process.</p> <p>13 Q. Let me get a list of those. The battalion</p> <p>14 chief -- The grievance related to the battalion</p> <p>15 chief promotion, you completed that process?</p> <p>16 A. Yes, sir.</p> <p>17 Q. What grievances have you filed that you</p> <p>18 didn't -- Let me back up. I want to be clear.</p> <p>19 That's the only grievance procedure that</p> <p>20 you've completed?</p> <p>21 A. It was two grievance procedures I completed.</p> <p>22 One was in 2005 where I went -- where I</p> <p>23 underwent all the procedures of the City and</p>
Page 23	Page 25
<p>1 a career firefighter in '94, did you have any</p> <p>2 other employments?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Where else were you employed?</p> <p>5 A. I had several. I worked with Lamar Lawn Care,</p> <p>6 and that's of Auburn. I worked at JJ Raceway,</p> <p>7 which is a convenience store/gas station, and</p> <p>8 that's of Auburn. I worked at Wal-Mart</p> <p>9 Supercenter, and that was in Opelika, Alabama.</p> <p>10 I'm trying to think. Two years ago I started my</p> <p>11 own business as a lawn care and landscaping</p> <p>12 service business, and I've been doing that for</p> <p>13 two years. I think I touched them all. I</p> <p>14 think.</p> <p>15 Q. Now, I'm aware of two EEOC charges which you</p> <p>16 filed.</p> <p>17 A. Yes, sir.</p> <p>18 Q. The one about the battalion chief and promotion,</p> <p>19 and then one several years earlier that I think</p> <p>20 had to do with the Horace Clanton assignment.</p> <p>21 Have you filed any other EEOC charges other</p> <p>22 than those two? Not just the City of Auburn but</p> <p>23 anybody. Any other, other than those two EEOC</p>	<p>1 actually had a hearing. And that was in 2005</p> <p>2 where I was pretty much on my -- alone on that</p> <p>3 grievance and pursued all procedures in</p> <p>4 reference to.</p> <p>5 Q. What was the 2005 one about?</p> <p>6 A. That one was about -- That was when Mr. Horace</p> <p>7 Clanton was assigned as acting battalion chief</p> <p>8 in the presence of our official battalion chief</p> <p>9 who had health issues at the time.</p> <p>10 Q. You actually had a hearing on it?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Who was the hearing officer?</p> <p>13 A. The city Judge, Judge Joe Bailey.</p> <p>14 Q. Just briefly, what was the outcome of his --</p> <p>15 A. That I can recall, basically they stated that</p> <p>16 they didn't find anything in reference to me</p> <p>17 having a grievance or any grounds in reference</p> <p>18 to my complaint that I was applying on the City.</p> <p>19 Q. Were you the only person involved in that</p> <p>20 grievance?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And is that the same incident or scenario that</p> <p>23 led to the EEOC charge?</p>

Page 26	Page 28
1 A. The first one.	1 me about you filed but did not complete the
2 Q. Yes, sir.	2 process?
3 A. Yes, sir.	3 A. I didn't go through the whole process where a
4 Q. And did you receive a right to sue letter on	4 hearing was involved.
5 that first EEOC charge involving Mr. Clanton?	5 Q. Okay. Tell me about those grievances. And if
6 A. From the attorney firm that I had at that time,	6 you can, start at your earliest one that you can
7 yes, I did receive one.	7 remember.
8 Q. You had a law firm representing you at that	8 A. If I'm thinking correctly, the first one I ever
9 time?	9 filed was in 2001, and that was filed on my
10 A. I had a law firm I was consulting with, yes.	10 immediate supervisor, Melvin Dean Garrett.
11 Q. Who were they?	11 Q. Just tell me what was the nature of the
12 A. Brooks Law Firm of Birmingham, Alabama.	12 grievance.
13 Q. But my understanding is you did not file a	13 A. Basically I was being labeled as a problem from
14 lawsuit as a result of that EEOC complaint; is	14 my immediate supervisor and coworkers, and I
15 that true?	15 thought I was being treated unfairly. So I
16 A. No, sir.	16 underwent the grievance procedures of the City.
17 Q. No, sir, you --	17 Q. And how was that resolved?
18 A. No, I didn't.	18 A. Basically it was resolved when we got to the
19 Q. It's true you did not file a complaint?	19 acting fire chief at the time, Mr. Larry
20 A. I filed a complaint and went all the way through	20 Langley.
21 the hearing and to the point where I got the	21 Q. And how did Mr. Langley resolve it?
22 right to sue letter, but after --	22 A. Basically the problem was confronted at hand,
23 MR. HORSLEY: He's talking about a	23 and to make a long story short, we left the room
Page 27	Page 29
1 lawsuit.	1 with an understanding that the problem wouldn't
2 Q. You didn't file a lawsuit as a result of that?	2 happen again.
3 A. No, sir.	3 Q. And did that work out to your satisfaction?
4 Q. So you didn't file a lawsuit as a result of	4 A. For a little bit of time it did, yes, sir.
5 either that EEOC charge or grievance?	5 Q. What was there about being labeled a problem
6 A. No, sir.	6 that you considered being unfair treatment?
7 Q. Tell me what other grievances that you filed	7 A. Well, there was a lot of things going on on
8 with the City that you didn't complete the	8 shift whereas it was presented to me that people
9 process.	9 had problems working for me, working with me,
10 A. Past and present?	10 or, better yet, just saying overall that I
11 Q. Yeah. All of them.	11 wanted things done my way, of that nature,
12 A. All of them. Okay.	12 whereas I was doing basically what I was told or
13 Q. Well, let me back up. I want all of them, but	13 advised to do through my immediate supervisor,
14 if you have any present ones that are still	14 who was Captain Garrett at the time.
15 pending, I'm going to put them in a different	15 Q. Now, you were a lieutenant then?
16 category.	16 A. Yes, sir.
17 A. Okay.	17 Q. And you would have reported to Captain Garrett?
18 Q. Do you have any grievances that are still	18 A. Yes, sir. That's my immediate supervisor.
19 pending?	19 Q. What location was this?
20 A. No, sir.	20 A. This happened at Station 1.
21 Q. So all --	21 Q. And I want to be clear. Would the captain have
22 A. Present day, no, sir.	22 been the highest ranking officer at Station 1 at
23 Q. So all the grievances that you're about to tell	23 that time?

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<p>1 A. Captain Garrett was the shift commander for that</p> <p>2 shift. And if I'm thinking correctly, that</p> <p>3 was -- I want to say it was A shift, but</p> <p>4 don't -- I don't actually recall the actual</p> <p>5 shift. But he was the shift commander.</p> <p>6 Q. And would y'all have both been on the same shift</p> <p>7 at the same time?</p> <p>8 A. Yes, sir. Same station.</p> <p>9 Q. When is the next grievance that you recall?</p> <p>10 A. The next one was on -- was when I changed</p> <p>11 shifts. I went through a shift change and</p> <p>12 received another immediate supervisor by the</p> <p>13 name of Danny Leverette.</p> <p>14 Q. Just generally what was the nature of that</p> <p>15 complaint?</p> <p>16 A. It was basically a problem from the previous</p> <p>17 grievance I filed where it carried over, and the</p> <p>18 same things pretty much started happening again.</p> <p>19 Q. You were labeled a problem?</p> <p>20 A. Yes, sir.</p> <p>21 Q. How was that resolved?</p> <p>22 A. Same procedures. Underwent the procedures and</p> <p>23 got to Mr. Langley's office again, and I</p>	<p>1 A. No, sir. I pretty much presented it to my</p> <p>2 immediate supervisor. What he did, I don't</p> <p>3 know, but I received my evaluation immediately.</p> <p>4 Q. Any other grievances you filed?</p> <p>5 A. I've had to do that twice. I had to file a</p> <p>6 grievance twice on that, evaluation purposes.</p> <p>7 Q. Okay.</p> <p>8 A. For the same reasons.</p> <p>9 Q. And I assume it was the same result on each one</p> <p>10 of them?</p> <p>11 A. Yes, sir.</p> <p>12 Q. You talked to your superior officer, and the</p> <p>13 next thing is you get your evaluation?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Any other grievances?</p> <p>16 A. If I'm thinking correctly, the next one was when</p> <p>17 I was assigned to Station 5. I'm sorry. I'm</p> <p>18 sorry. Back up.</p> <p>19 I started a grievance about an incident that</p> <p>20 happened on the fire scene over a fire call that</p> <p>21 involved Mr. Larry Langley. And my immediate</p> <p>22 supervisor at that time was the late Jimmy</p> <p>23 Brown, who is deceased at this time.</p>
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<p>1 requested that it stop. And we left his office</p> <p>2 with the understanding that it would.</p> <p>3 Q. And did it work out?</p> <p>4 A. For a little -- short period of time, yes.</p> <p>5 Q. And when is your next grievance?</p> <p>6 A. I'm trying to get them in order here. I</p> <p>7 initiated a grievance -- I don't recall the</p> <p>8 date. I initiated a grievance in reference to</p> <p>9 my evaluation. And basically that was about the</p> <p>10 fact that my evaluation was due at a certain</p> <p>11 time, and it wasn't according to the rules in</p> <p>12 place.</p> <p>13 Q. Wasn't timely completed?</p> <p>14 A. No, sir, it wasn't timely.</p> <p>15 Q. And who was the person that was supposed to</p> <p>16 evaluate you?</p> <p>17 A. I don't recall that, Mr. Morgan. I'm sorry.</p> <p>18 Q. How was that --</p> <p>19 A. I received my evaluation. It was late but I</p> <p>20 received it.</p> <p>21 Q. Did you have to go any further than just</p> <p>22 initiating a grievance? Did you meet with Larry</p> <p>23 Langley or --</p>	<p>1 Q. What rank was Langley at the time?</p> <p>2 A. Langley was acting fire chief.</p> <p>3 Q. Just briefly tell me what happened.</p> <p>4 A. Basically what happened on that incident was we</p> <p>5 was on an actual working structure fire, fire</p> <p>6 call, that day. Captain Brown at the time was</p> <p>7 not working. The acting supervisor was Dennis</p> <p>8 Carlises. And during the process of working</p> <p>9 that structure fire, Mr. Langley arrived on the</p> <p>10 scene. And from what I saw, he was in the way.</p> <p>11 He didn't have on his proper equipment, and we</p> <p>12 was trying to work. And basically I asked him</p> <p>13 to remove himself from what we considered to be</p> <p>14 the hot zone of the fire scene. And the remark</p> <p>15 he gave me back was something I probably</p> <p>16 shouldn't say.</p> <p>17 Q. You can say it. We've probably all heard</p> <p>18 something similar.</p> <p>19 A. Well, to the best of my knowledge, he told me,</p> <p>20 I'm the damn fire chief; I do what I want to do;</p> <p>21 you just get to work. Not in those exact</p> <p>22 words.</p> <p>23 So at that point I asked -- I went to the</p>



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<p>1 immediate supervisor, Mr. Carlisles, and asked</p> <p>2 him could he remove him from the fire scene so</p> <p>3 we could do our work. And the response</p> <p>4 Mr. Carlisles gave me at that time was, I told</p> <p>5 him, and he basically told me he was the fire</p> <p>6 chief and he do what he want to do.</p> <p>7 So we worked through that and put the fire</p> <p>8 out. And after the fire when we returned to the</p> <p>9 station, it was a called meeting for the</p> <p>10 personnel on shift who actually fought the</p> <p>11 fire. And in this meeting, again Mr. Langley</p> <p>12 became very irate with me in front of everybody</p> <p>13 who was present. And at that point I considered</p> <p>14 things to be totally out of hand so I sat down,</p> <p>15 and I just didn't say anything else until</p> <p>16 everybody left. And when everybody did leave,</p> <p>17 to make a long story short, I told him that I</p> <p>18 would not accept that type of behavior and I</p> <p>19 just wasn't going to tolerate it.</p> <p>20 So therefore I wrote a letter to my</p> <p>21 immediate supervisor, who -- when he came back</p> <p>22 to work. Explained it to him, what happened.</p> <p>23 And his response basically was, this is</p>	<p>1 Q. How was he violated?</p> <p>2 A. It was one of those situations where you're new</p> <p>3 on the shift, and this is our way of initiating</p> <p>4 you in sort of speaking, something that happens</p> <p>5 or has happened at the fire station. But this</p> <p>6 particular time when it happened, he felt</p> <p>7 violated and he came to me.</p> <p>8 Q. Can you tell me what it was that was done to him</p> <p>9 or that he relayed to you?</p> <p>10 A. From what I was told and from what I observed</p> <p>11 when it was presented to me, he was severely wet</p> <p>12 down with water and covered with food product,</p> <p>13 duck-taped, et cetera, et cetera, to the point</p> <p>14 where -- He told me in the beginning it was</p> <p>15 against his will. Like I say, Mr. Morgan, I</p> <p>16 didn't see it. It was brought to me after the</p> <p>17 fact. And when I asked him what did he want me</p> <p>18 to do about it in reference to, he said he</p> <p>19 wanted me to do something. So the only thing I</p> <p>20 knew to do was to follow the procedures that</p> <p>21 were in place for the City.</p> <p>22 Q. Is he a white male?</p> <p>23 A. He is a white male.</p>
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<p>1 something that always happens at the fire scene;</p> <p>2 you should be used to this by now; deal with</p> <p>3 it. And being that I got that response, I</p> <p>4 decided not to do anything at that point but to</p> <p>5 just have that documented and in my presence.</p> <p>6 Q. Any other grievances?</p> <p>7 A. I think the next one was when I was assigned to</p> <p>8 Station 5, the new station that was recently</p> <p>9 built or the last station that was recently</p> <p>10 built, the fire station that was built in</p> <p>11 Auburn.</p> <p>12 Q. Tell me about that one.</p> <p>13 A. This particular grievance involved an incident</p> <p>14 where a young man was -- I'm trying to think of</p> <p>15 a good word. He was violated and he chose to</p> <p>16 pursue it.</p> <p>17 Q. Who is this?</p> <p>18 A. His name was Paden Payton.</p> <p>19 Q. Pagan?</p> <p>20 A. Paden Payton.</p> <p>21 Q. P-A-D-E-N?</p> <p>22 A. Payton Paden. I'm sorry. P-A-Y-T-O-N</p> <p>23 P-A-D-E-N.</p>	<p>1 Q. Did you file a grievance on his behalf or did he</p> <p>2 file his own grievance?</p> <p>3 A. Well, that's leading to -- everything that was</p> <p>4 done was through me as his immediate</p> <p>5 supervisor. I guess I should just tell you all</p> <p>6 in detail leading to the point where I did what</p> <p>7 I did. Would that be okay?</p> <p>8 Q. Sure.</p> <p>9 A. I presented in writing what I was told by him</p> <p>10 and my guys on my shift to my immediate</p> <p>11 supervisor. From that point I think it went to</p> <p>12 the Public Safety Department, whereas the deputy</p> <p>13 fire chief, acting fire chief, training chief,</p> <p>14 all those superior officers got involved to</p> <p>15 investigate. And to make a long story short, I</p> <p>16 convinced Mr. Paden to the point that we can try</p> <p>17 to resolve this in-house if we possibly can. Of</p> <p>18 course, he can do anything he want. That was</p> <p>19 his choice. But as his immediate supervisor and</p> <p>20 on the behalf of the division, I was trying to</p> <p>21 resolve this in-house and in a progressive</p> <p>22 manner as much as possible. And it was.</p> <p>23 Mr. Paden's request was to remain under my</p>

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<p>1 immediate supervision until he regained his</p> <p>2 confidence. And he did stay with me; that is,</p> <p>3 until I was told to report to another station.</p> <p>4 And when I was told to report to another</p> <p>5 station, I didn't understand why. And, of</p> <p>6 course, when I told Payton that I was advised to</p> <p>7 move to another station, he resigned. And his</p> <p>8 reason for resigning was that he asked to remain</p> <p>9 under my immediate supervision until he regained</p> <p>10 his confidence. Being that they were moving me</p> <p>11 and I wasn't there to be over him, he didn't</p> <p>12 feel confident anymore to even work there and he</p> <p>13 resigned.</p> <p>14 Q. What station was that?</p> <p>15 A. Station 5.</p> <p>16 Q. Is that something that's called hazing?</p> <p>17 A. Yes, sir, that's exactly what it is.</p> <p>18 Q. Did he participate in any hazing himself?</p> <p>19 A. According to the investigation from what I was</p> <p>20 told, they say he did. According to Mr. Paden,</p> <p>21 he say he didn't.</p> <p>22 Q. Have you ever participated in any hazing?</p> <p>23 A. No, sir.</p>	<p>1 of course, that took place, but I was still</p> <p>2 given an opportunity to move back to Station 5</p> <p>3 by Mr. Lamar. And after conversing with my</p> <p>4 immediate supervisor -- present immediate</p> <p>5 supervisor, Mr. Darby, Chief Darby, and through</p> <p>6 agreement with him as my immediate supervisor, I</p> <p>7 chose to remain at Station 4 and just work</p> <p>8 things out from that point.</p> <p>9 Q. Which station was Jordan the shift commander, 4</p> <p>10 or 5?</p> <p>11 A. Chief Jordan was working administrative duties</p> <p>12 as a battalion chief. He was working in the</p> <p>13 public safety building. He was working Monday</p> <p>14 through Friday schedule. He was not assigned --</p> <p>15 Prior to him becoming shift commander, he was</p> <p>16 not assigned to a station.</p> <p>17 Q. Here's why I'm confused. You were at Station 5</p> <p>18 and transferred to Station 4.</p> <p>19 A. Yes, sir.</p> <p>20 Q. Did you have any problems with the shift</p> <p>21 commander at Station 5?</p> <p>22 A. No, sir.</p> <p>23 Q. Did you want to leave Station 5?</p>
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<p>1 Q. Not even as a young firefighter?</p> <p>2 A. No, sir.</p> <p>3 Q. What's your next grievance that you started but</p> <p>4 didn't complete?</p> <p>5 A. Well, I think the last grievance I started and</p> <p>6 didn't complete was in reference to the incident</p> <p>7 with Mr. Paden whereas I questioned why I was</p> <p>8 being moved from Station 5. And it was with</p> <p>9 Mr. Lamar, who at the time was the deputy chief.</p> <p>10 Q. You went from 5 to where?</p> <p>11 A. I went from 5 to Station 4.</p> <p>12 Q. And did you file a grievance and it went up</p> <p>13 to --</p> <p>14 A. I initiated a grievance, and it stopped at</p> <p>15 Mr. Lamar.</p> <p>16 Q. And how was it resolved?</p> <p>17 A. Basically it was decided between him and my</p> <p>18 immediate supervisor, who was Matthew Jordan.</p> <p>19 What happened was that when I initiated a</p> <p>20 grievance, the response was that Chief Jordan</p> <p>21 was going administratively working Monday</p> <p>22 through Friday and that a new shift commander</p> <p>23 was stepping in by the name of Joey Darby. And,</p>	<p>1 A. No, sir.</p> <p>2 Q. When you arrived at Station 4, did you have any</p> <p>3 problems with the shift commander?</p> <p>4 A. No, sir.</p> <p>5 Q. You just didn't want to go from 5 to 4?</p> <p>6 A. Basically I was asked to go to Station 5 when it</p> <p>7 opened by Mr. Langley. And I had put in a</p> <p>8 request to go to Station 5 when it was being</p> <p>9 built that I explained to my immediate</p> <p>10 supervisor. So my problem was here I am being</p> <p>11 requested to go and asking to go, and a month</p> <p>12 and a half later or right at almost two months</p> <p>13 I'm being asked to leave. And I wanted to know</p> <p>14 why.</p> <p>15 Q. And did you ask somebody why?</p> <p>16 A. I asked Chief Jordan why.</p> <p>17 Q. What did he say?</p> <p>18 A. The response he gave me was: You're closer to</p> <p>19 home and you don't have to travel so far to get</p> <p>20 to work. And my response to him was: For 14</p> <p>21 years I've never been late for work regardless</p> <p>22 of where the station was and how far I had to</p> <p>23 travel.</p>

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1 Q. But now that you're at -- Are you still at 4?	1 Division or the City of Auburn in general.
2 A. I'm still at 4.	2 Basically what you have is a panel of officers,
3 Q. And once you got to 4 and you filed your	3 lieutenant or higher, who would sit through a
4 grievance, they gave you an opportunity to go	4 scenario or different scenarios throughout the
5 back to 5 and you elected to stay at 4?	5 entire procedures. I think the procedures at
6 A. Yes, sir. After speaking with my present	6 that time lasted a week. And basically what I
7 supervisor.	7 had to do was undergo these scenarios to the
8 Q. Is there some significance in Darby becoming the	8 point where they would take the information
9 shift commander --	9 received and grade me appropriately or
10 A. That was not my call. That was somebody else's.	10 accordingly. Didn't take a written test. Had
11 Q. I mean is there some significance in him being	11 to be eligible to apply for the position
12 shift commander that influenced you to stay at	12 basically was the only requirement. And at that
13 4?	13 time, I was eligible to apply; therefore, I did.
14 A. Yes, sir.	14 Q. Do you remember what the eligibility
15 Q. And what was that?	15 requirements were?
16 A. Basically Chief Darby was coming on fresh. He	16 A. No, sir, I don't recall. But at the time I know
17 hadn't made this decision with me. And after	17 I had several certifications: Firefighter I and
18 talking with him and letting him know what I	18 II, Instructor I and II, Fire Officer I and II,
19 thought about the move in general, we just came	19 hazmat technician, apparatus operator, pumper
20 to a conclusion where we worked it out where I	20 certification. Fire Inspector I, I think I had.
21 would stay at 4 and the other guy would remain	21 Q. What I was asking actually is: Were there any
22 at 5 who actually replaced me when I left.	22 time in grade requirements? Did you have to be
23 Q. And do you agree with me that it is up to the	23 a permanent firefighter?
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1 chief or his administrative assistant to	1 A. I was never -- Well, you had to be a career
2 determine where firefighters should be assigned?	2 firefighter to apply.
3 A. It's not my decision, Mr. Morgan. As far as I	3 Q. Okay.
4 know, it is everyone above me -- that's	4 A. But I was not given any pertinent time in
5 battalion chief and up -- who make those	5 reference to applying for this position.
6 decisions.	6 Q. So if I became a career firefighter on April
7 Q. And do you agree with me they are the ones that	7 1st, I could have taken the promotion procedure
8 should make those decisions?	8 for lieutenant on April 5?
9 A. They are in position to make those decisions so	9 A. One thing I was told is that I couldn't apply if
10 therefore, I guess, it's their duty to make	10 I was on probation.
11 those decisions when the time come.	11 Q. Okay.
12 Q. Now, you applied for promotion to lieutenant in	12 A. And I wasn't on probation when I applied. Let
13 '96?	13 me confirm that.
14 A. Yes, sir.	14 Q. How long is your probationary period?
15 Q. And you were promoted?	15 A. My probationary period when I became career --
16 A. Yes, sir.	16 well, when I became a student was one year. My
17 Q. What was the procedure for lieutenant?	17 probationary period when I became a career
18 A. At that time?	18 firefighter was one year, and my probationary
19 Q. Yes, sir.	19 period when I became a lieutenant was one year.
20 A. At that time I underwent an assessment center.	20 Q. So you had to at least have one year of service
21 Q. Explain that to me.	21 as a career firefighter to apply for lieutenant
22 A. An assessment center consists of a panel of	22 when you applied?
23 assessors, non-affiliated with Auburn Fire	23 A. In reference to me, yes, sir.



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<p>1 Q. What were the ranks in the fire department in</p> <p>2 '96 when you applied for lieutenant?</p> <p>3 A. Okay. Chain of command in '96 was student</p> <p>4 firefighter, career firefighter, team leader,</p> <p>5 lieutenant, captain, deputy chief and fire</p> <p>6 chief. And that's from -- leads to your</p> <p>7 superior.</p> <p>8 Q. And what was your understanding as to the</p> <p>9 evolution of team leaders? What were they to do</p> <p>10 as you understood it and what did they do?</p> <p>11 A. Team leaders supervise student firefighters.</p> <p>12 They were created contingent to the student</p> <p>13 firefighter program whereas fire lieutenants was</p> <p>14 part of the career ladder itself. Student</p> <p>15 firefighters and team leaders was a temporary</p> <p>16 full-time position whereas lieutenant and up</p> <p>17 were career positions: salaries, benefits, the</p> <p>18 whole nine.</p> <p>19 Q. And where did you get that understanding?</p> <p>20 A. I got it in writing from the requirements. The</p> <p>21 understanding, whatever, came through the City</p> <p>22 of Auburn rules and regulations, et cetera.</p> <p>23 Q. Team leader would be a career firefighter?</p>	<p>1 was used for team leaders?</p> <p>2 A. All I can tell you, Mr. Morgan, was it was a</p> <p>3 structured interview.</p> <p>4 Q. Did you ever participate in the structured</p> <p>5 interview?</p> <p>6 A. I never went through a structured interview for</p> <p>7 a team leader, but I have on occasion sat in as</p> <p>8 an interview board.</p> <p>9 Q. You were on the interview board. How many</p> <p>10 interview boards did you have -- were you on?</p> <p>11 A. Several, Mr. Morgan. Estimated four times, I</p> <p>12 guess. It was several times.</p> <p>13 Q. In your opinion has the role of a team leader</p> <p>14 changed from what you just described in '96 up</p> <p>15 until, what year was it, '06, I guess, that they</p> <p>16 became lieutenants?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Did the role of team leaders change during that</p> <p>19 period of time?</p> <p>20 A. For the record, Mr. Morgan, I was the last</p> <p>21 lieutenant promoted in the Auburn Fire</p> <p>22 Division. Anything after my promotion was team</p> <p>23 leaders.</p>
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<p>1 A. A team leader would be a career -- The way it</p> <p>2 worked was you had to be a career firefighter to</p> <p>3 apply for team leader. You couldn't apply for a</p> <p>4 team leader position that I'm aware of as a</p> <p>5 student firefighter. You couldn't do it.</p> <p>6 Q. Student firefighters can't do anything but be</p> <p>7 student firefighters.</p> <p>8 A. That's it.</p> <p>9 MR. HORSLEY: We're still talking</p> <p>10 1996, right?</p> <p>11 A. Yes.</p> <p>12 Q. Yes. I'm just trying to --</p> <p>13 A. Yes, sir.</p> <p>14 Q. -- get the promotion procedures as we go</p> <p>15 forward.</p> <p>16 A. Understand, Mr. Morgan, I've never been a team</p> <p>17 leader.</p> <p>18 Q. I understand.</p> <p>19 A. But from what I understand, you become career.</p> <p>20 And if the position became available, these guys</p> <p>21 applied, or the career firefighters who was</p> <p>22 eligible or wanted to apply applied.</p> <p>23 Q. Are you familiar with the promotion process that</p>	<p>1 Q. How many lieutenants were there when you were</p> <p>2 promoted?</p> <p>3 A. Three, maybe four.</p> <p>4 Q. You were the last lieutenant?</p> <p>5 A. I was the last lieutenant to be promoted in the</p> <p>6 Auburn Fire Division through an assessment</p> <p>7 center.</p> <p>8 Q. So then the team leaders that came after you,</p> <p>9 did they assume the responsibilities of a</p> <p>10 lieutenant?</p> <p>11 A. Through the powers that be, they were allowed to</p> <p>12 conduct themselves on my level or on a level of</p> <p>13 a fire lieutenant.</p> <p>14 Q. So their role, at least in your viewpoint,</p> <p>15 expanded from just being supervisors for student</p> <p>16 firefighters to assuming the responsibilities of</p> <p>17 a lieutenant?</p> <p>18 A. They was assuming the responsibilities for</p> <p>19 career firefighters.</p> <p>20 Q. Say the last year that there were team</p> <p>21 leaders -- '04, '05, whatever year that may</p> <p>22 be -- in your opinion was there any difference</p> <p>23 in what you as a lieutenant did as opposed to</p>

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1 what a team leader did?	1 assessment?
2 A. No, sir. Basically from 1996 and up, they were	2 A. Yes, sir.
3 acting as station officers, which that's what I	3 Q. What procedure was used for training officer?
4 am. I'm a station officer. I just had a	4 A. I underwent what I consider to be a structured
5 different title as they. And I underwent a	5 interview.
6 different procedure as far as being promoted.	6 Q. Let me back up on the captain's assessment
7 Other than that they stepped in as a station	7 center.
8 officer and conducted themselves as a station	8 Other than the assessment center, do you
9 officer to their ability.	9 know of any other requirements at that time for
10 Q. Once you were promoted to lieutenant, I assume	10 the captain's promotion?
11 you had a new assignment at that point.	11 A. I'm not aware of that, sir.
12 A. As far as responsibilities, duties, stations and	12 Q. Did you pay any attention one way or the other
13 all that?	13 what the captains had to do or were you just
14 Q. Yes.	14 interested in being a lieutenant at that time?
15 A. Yes, sir. I had a very wide range of	15 A. I just -- It was totally separate. If you
16 responsibilities and duties as a station	16 applied for lieutenant, you went to the
17 officer, fire lieutenant.	17 lieutenant. If you applied for captain, you
18 Q. Did you apply for any more promotions between	18 went to captain.
19 lieutenant in '96 and the battalion chief	19 Q. The training officer was a structured interview,
20 promotion in '06?	20 and when was that promotion procedure?
21 A. Yes, sir.	21 A. I don't recall the actual year or date.
22 Q. What other promotions did you apply for?	22 Q. Has it been, say, within the last five years?
23 A. I applied for training chief -- the training	23 A. Yes, sir, it was within the last five.
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1 officer position. Excuse me. I applied for the	1 Q. And who was promoted?
2 deputy fire chief position.	2 A. A gentleman by the name of Terry Walker.
3 Q. When was the last captain's promotion?	3 Q. Is he still the training officer?
4 A. If I'm not mistaken, the last one was when I was	4 A. No, sir. He's retired.
5 promoted. When they did an assessment center	5 Q. Who took his place?
6 for me in '96, it was an assessment center for	6 A. A gentleman by the name of John Lankford.
7 lieutenants and captains.	7 Q. Did you apply for training officer when
8 Q. So you never applied and went through an	8 Lankford --
9 assessment center for the position of captain;	9 A. No, sir, I did not.
10 is that correct?	10 Q. So you applied for training officer one time,
11 A. No, sir.	11 and that was when Terry Walker received it?
12 Q. No, sir, it's not correct or --	12 A. Yes, sir.
13 A. I didn't apply for the captain --	13 Q. And that was a structured interview?
14 Q. What I said is correct? You never applied and	14 A. Pretty much, sir, yes.
15 went through an assessment center for captain,	15 Q. And you sat on, you told me, the structured
16 true?	16 interview panels for team leaders?
17 A. No, sir.	17 A. Yes, sir.
18 MR. HORSLEY: That is true?	18 Q. Was that a similar-type interview? I'm sure the
19 Q. Wait a minute.	19 questions were different, but people from
20 A. That is true. A captain position never came	20 in-house, firefighters and others --
21 available during my era.	21 A. The difference between team leaders and the
22 Q. So you did the lieutenant assessment in '96 at	22 training officer was the team leader wasn't
23 the same time that they did the captain	23 intense like the training officer was. The team

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<p>1 leader basically was a panel of questions that</p> <p>2 was presented to the candidate. When I went</p> <p>3 through training officer, I went through seven</p> <p>4 different scenarios. I had to make, I think it</p> <p>5 was, a three-minute presentation. I had to go</p> <p>6 through what they call, I think it was, an</p> <p>7 in-basket situation where you prioritize your</p> <p>8 responsibilities for the day. It's all on</p> <p>9 paper. And then you undergo an actual interview</p> <p>10 where you sit down and they ask you questions,</p> <p>11 you know. Basically that was it.</p> <p>12 Q. Do you remember who was on your panel or the</p> <p>13 panel?</p> <p>14 A. Dean Garrett, Danny Leverette, Lee Lamar, Larry</p> <p>15 Langley. I can't remember who else.</p> <p>16 Q. So these were all fire division people?</p> <p>17 A. Yes. They was city employees, whether it was</p> <p>18 human resources down through the fire division.</p> <p>19 Q. And Terry Walker, did you think that he was a</p> <p>20 good hire?</p> <p>21 A. At the present time, Mr. Morgan, I didn't know</p> <p>22 anything about Terry Walker so I can't say if he</p> <p>23 was good or bad. I don't know.</p>	<p>1 officer, and deputy fire chief --</p> <p>2 A. Yes.</p> <p>3 Q. -- before the battalion chief?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And then you sat on some of the interview panels</p> <p>6 with the team leader position?</p> <p>7 A. Yes, sir.</p> <p>8 MR. MORGAN: Can we take a quick</p> <p>9 break?</p> <p>10 MR. HORSLEY: Yeah.</p> <p>11 (Brief recess was taken.)</p> <p>12 Q. (Continuing by Mr. Morgan) Did you have any</p> <p>13 involvement or input into the last team leader</p> <p>14 promotion procedure where a written test was</p> <p>15 used?</p> <p>16 A. No, sir.</p> <p>17 Q. Did you know anything about the requirements for</p> <p>18 that last team leader promotion procedure?</p> <p>19 A. No, sir. The only thing I knew, Mr. Morgan, was</p> <p>20 basically information that was presented the day</p> <p>21 of that was going to be questioned to the</p> <p>22 candidates. That's all I know. And I was asked</p> <p>23 to be on the board.</p>
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<p>1 Q. And when did you apply for the deputy fire chief</p> <p>2 position?</p> <p>3 A. Again, I don't actually remember the year and</p> <p>4 date, but it was within the five years.</p> <p>5 Q. And who was promoted to that position?</p> <p>6 A. Lee Lamar. Mr. Lee Lamar.</p> <p>7 Q. What was the procedure used at that time?</p> <p>8 A. Basically I submitted an application, and I went</p> <p>9 to a structured interview at City Hall.</p> <p>10 Q. And the panel, was it all firefighters or fire</p> <p>11 division or were there other people on the</p> <p>12 panel?</p> <p>13 A. It was other people on the panel outside of the</p> <p>14 fire division, yes.</p> <p>15 Q. So you had an application and a structured</p> <p>16 interview?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Any other component of that promotion procedure?</p> <p>19 A. No, sir.</p> <p>20 Q. And Mr. Lamar was promoted?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Have we covered all the promotions that you've</p> <p>23 actually applied for -- lieutenant, training</p>	<p>1 Q. And so you were on the structured interview</p> <p>2 board or panel for the last team leader</p> <p>3 promotion?</p> <p>4 A. I don't know if it was the last one, but I do</p> <p>5 know I've sat in on several.</p> <p>6 Q. Did you ever hear any complaints or comments</p> <p>7 about a written test being a component of the</p> <p>8 team leader promotion procedure?</p> <p>9 A. I don't recall a written test ever being a</p> <p>10 component of the promotion procedure for a team</p> <p>11 leader.</p> <p>12 Q. And then at some point there was a petition</p> <p>13 presented to the City for team leaders to become</p> <p>14 lieutenants.</p> <p>15 A. Yes, sir.</p> <p>16 Q. You're familiar with that?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And you did not join in that petition?</p> <p>19 A. I wasn't given the opportunity to join,</p> <p>20 Mr. Morgan.</p> <p>21 Q. How did that come about?</p> <p>22 A. The first I heard or seen anything in reference</p> <p>23 to a petition for team leaders and the title</p>

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<p>1 change was December of 2005.</p> <p>2 Q. And what did you see or hear at that time?</p> <p>3 A. Basically me and two other of my insubordinates</p> <p>4 (sic) were called to a meeting in the public</p> <p>5 safety building. And basically this meeting was</p> <p>6 in reference to whether we was for or opposed to</p> <p>7 the title change from team leader to</p> <p>8 lieutenants.</p> <p>9 Q. Who were the other two?</p> <p>10 A. Mr. Christopher Turner and Mr. Walter Allen.</p> <p>11 Q. Is it your testimony that's the first time that</p> <p>12 you learned the City was considering or had been</p> <p>13 petitioned to change from team leader to</p> <p>14 lieutenant?</p> <p>15 A. From my understanding, Mr. Morgan, is basically</p> <p>16 this all rendered from when the captains had a</p> <p>17 title change to battalion chiefs. So therefore</p> <p>18 the team leaders took it upon themselves to</p> <p>19 pursue a title change as well. I had heard</p> <p>20 rumors, but I didn't have any definite, you</p> <p>21 know, idea or information in reference to they</p> <p>22 were doing that until that day.</p> <p>23 Q. But you had heard rumors that the team leaders</p>	<p>1 leaders. All the team leaders in the</p> <p>2 department, their signature was on this</p> <p>3 paperwork. And it was provided to me by the --</p> <p>4 I guess the public safety director, Mr. James,</p> <p>5 gave the okay for me to receive that, and it was</p> <p>6 given to me by Mr. Reeves.</p> <p>7 Q. You received it at that meeting?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Let me back up a minute.</p> <p>10 Were you the last lieutenant when this</p> <p>11 meeting was called?</p> <p>12 A. In 1996 I was the last lieutenant to be</p> <p>13 promoted.</p> <p>14 Q. I understand that, but were you the last actual</p> <p>15 lieutenant rank --</p> <p>16 A. Yes, sir.</p> <p>17 Q. -- in December of '05?</p> <p>18 A. The only one, yes, sir.</p> <p>19 Q. Now, were Chris Turner and Walter Allen the only</p> <p>20 two career firefighters that were not team</p> <p>21 leaders?</p> <p>22 A. I'm not sure about that, Mr. Morgan. All I know</p> <p>23 is they were career firefighters.</p>
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<p>1 were making an effort to change it to</p> <p>2 lieutenant?</p> <p>3 A. In the fire house, Mr. Morgan, you hear all kind</p> <p>4 of rumors. I just don't believe them until I</p> <p>5 see them.</p> <p>6 Q. So the first actual confirmation that you had</p> <p>7 that that was under consideration was when you,</p> <p>8 Chris Turner, and Walter Allen were called to a</p> <p>9 meeting in December of '05?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And who was that meeting with?</p> <p>12 A. It was my immediate supervisor, Dean Garrett,</p> <p>13 Mr. Steve Reeves, Mr. Bill James, Mr. Lamar,</p> <p>14 and, of course, Mr. Turner, and Mr. Allen. I</p> <p>15 think that's everybody.</p> <p>16 Q. And what was the discussion?</p> <p>17 A. Basically the discussion was -- the floor was</p> <p>18 pretty much open to the point in reference to</p> <p>19 what we thought about it. And me, myself, I</p> <p>20 requested to see everything in reference to, the</p> <p>21 proposal and the reason why we were there and</p> <p>22 all. And I was presented with the paperwork</p> <p>23 that included thirteen signatures of team</p>	<p>1 Q. And Chris Turner is a black male?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And Walter Allen is a white male?</p> <p>4 A. Yes, sir.</p> <p>5 Q. So you received the paperwork which showed that</p> <p>6 all thirteen of the team leaders --</p> <p>7 Which included Eddie Ogletree, true?</p> <p>8 A. Yes, sir.</p> <p>9 Q. -- had petitioned for team leaders to become</p> <p>10 lieutenants?</p> <p>11 A. Yes, sir. And understand, Mr. Morgan, that was</p> <p>12 the first time I had seen actual paperwork in</p> <p>13 reference to a petition being presented for team</p> <p>14 leaders getting a title change. That was the</p> <p>15 first time. And I confirmed that in the</p> <p>16 meeting. I was like, this is the first time</p> <p>17 I've seen this; can I take time to read it. And</p> <p>18 I read it, and I asked for copies of it.</p> <p>19 Q. Do you know why you and Chris and Walter Allen</p> <p>20 were called to that meeting?</p> <p>21 A. No, sir. I don't know the actual reason, but I</p> <p>22 know I did speak with Mr. Langley with my</p> <p>23 immediate supervisor present prior to that</p>

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<p>1 meeting. Mr. Langley.</p> <p>2 Q. Was he in this meeting?</p> <p>3 A. Yes, sir, he was. If I'm thinking correctly, he</p> <p>4 was.</p> <p>5 Q. So Langley, Lamar, James, Reeves, and Garrett</p> <p>6 were in the meeting with you two?</p> <p>7 A. Yes, sir.</p> <p>8 Q. But then you said you spoke to Mr. Langley. Did</p> <p>9 you speak to him outside of this meeting?</p> <p>10 A. I had to sign a form. I had to sign a form</p> <p>11 saying I was in favor of or against the title</p> <p>12 change. And at that time, I submitted some</p> <p>13 paperwork to Mr. Langley.</p> <p>14 Q. Let me back up. I'm a little confused.</p> <p>15 The form that you received whether you were</p> <p>16 in favor or not in favor, did you receive that</p> <p>17 before this meeting with these other people?</p> <p>18 A. I received it from Mr. Langley in his office</p> <p>19 before that meeting.</p> <p>20 Q. That same day or a different day?</p> <p>21 A. I don't think it was the same day, no, sir.</p> <p>22 Q. So you had had an opportunity, then, before that</p> <p>23 to put in whether or not you thought it was a</p>	<p>1 to include the thirteen signatures.</p> <p>2 Q. So when Mr. Langley handed you this form where</p> <p>3 you could vote "yes" or "no" on the name change,</p> <p>4 you didn't understand what was going on?</p> <p>5 A. No, sir, I didn't. Directly speaking, no, I</p> <p>6 didn't know.</p> <p>7 Q. And Mr. Langley didn't explain it to you?</p> <p>8 A. He explained it to me, but, I mean, it's one of</p> <p>9 those situations where I don't believe</p> <p>10 everything I hear regardless of who it comes</p> <p>11 from until I see it. But I know the paperwork</p> <p>12 that I saw and I signed, which was not in favor</p> <p>13 of the title change. And my main reason for</p> <p>14 that, Mr. Morgan, was because I didn't know</p> <p>15 nothing about it. I was never given an</p> <p>16 opportunity to -- in the beginning to sign with</p> <p>17 the other thirteen signatures to say I was for</p> <p>18 or against.</p> <p>19 Q. Well, looking back now, if you had been given</p> <p>20 the information, would your vote have been</p> <p>21 different?</p> <p>22 MR. HORSLEY: Object to the form. You</p> <p>23 can answer.</p>
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<p>1 good idea or bad idea?</p> <p>2 A. Yes, sir. I had a choice to make in reference</p> <p>3 to -- I was asked to fill out that paperwork and</p> <p>4 enclose it in an envelope to be submitted to</p> <p>5 human resources.</p> <p>6 Q. And did you do that?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And that was all done before this meeting that</p> <p>9 you're telling me about?</p> <p>10 A. Yes, sir. Now, understand, now, this paperwork</p> <p>11 I was given to sign off on was different from</p> <p>12 the paper I received at the meeting.</p> <p>13 Q. Well, how was it different?</p> <p>14 A. Well, basically the letter I received from</p> <p>15 Mr. Langley in the presence of Chief Garrett at</p> <p>16 the time was saying was I for or against.</p> <p>17 Q. Right. A vote.</p> <p>18 A. When I actually got in the meeting, I was, like,</p> <p>19 can somebody provide me with some information in</p> <p>20 reference to what's going on because this is new</p> <p>21 to me, and I want to know, you know, what does</p> <p>22 it involve. And that's when I received the</p> <p>23 paperwork stating everything that had been done</p>	<p>1 A. No, sir. I still would have been against it.</p> <p>2 Q. But when Mr. Langley handed you this sheet of</p> <p>3 paper, the form which you could vote, he didn't</p> <p>4 explain to you why or that the City had been</p> <p>5 petitioned by the team leaders? He didn't</p> <p>6 explain any of that to you?</p> <p>7 A. I don't recall exactly what he said,</p> <p>8 Mr. Morgan. But, like I said earlier, he gave</p> <p>9 me the paper. I read it. I presented to him my</p> <p>10 paperwork I had. And he said no, and so I</p> <p>11 marked the appropriate place indicating that I</p> <p>12 was not in favor of it. I folded the letter up</p> <p>13 and put it in an envelope, sealed it, and gave</p> <p>14 it to Mr. Langley.</p> <p>15 Q. What paperwork did you give Mr. Langley?</p> <p>16 A. I typed a letter myself on my behalf, the only</p> <p>17 lieutenant in the division, and presented it to</p> <p>18 him basically asking for -- in complainance</p> <p>19 (sic) to whatever the team leaders were doing.</p> <p>20 Q. Now, do you still have copies of that paperwork?</p> <p>21 A. Yes, sir, I do.</p> <p>22 Q. Well, I'm not trying to get into any privileged</p> <p>23 conversations, but do you know if that paperwork</p>



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1 was produced as part of your disclosures?	1 Q. And so you wanted your own title changed?
2 MR. MORGAN: I can get with you later	2 A. Yes, sir. Just like everybody else, I wanted
3 on that.	3 one.
4 A. Mr. Horsley has it. He has a copy of it.	4 Q. And what title change did you want?
5 Q. Let me backtrack one minute.	5 A. I wanted captain.
6 When you applied for lieutenant, they had a	6 Q. Well, now, at that time were there still captain
7 captain's promotion at the same time?	7 positions or had the captains been renamed
8 A. Yes, sir.	8 battalion chiefs?
9 Q. Was there any time in grade requirements for the	9 A. The captains had been renamed battalion chiefs.
10 captain promotion or could anybody apply for the	10 Q. So if the team leaders became lieutenants, you
11 captain promotion?	11 wanted a title change from lieutenant to
12 A. Again, sir, I don't know if there was any -- if	12 captain?
13 any of that applied. I'm not sure.	13 A. Yes, sir.
14 Q. You don't know whether or not you had to be a	14 Q. So then you and Chris Turner and Walter Allen
15 lieutenant to apply for captain or whether just	15 meet with these people that you've told me
16 a firefighter could apply for captain?	16 about: Dean, Steve, Lee, and Larry. What did
17 A. The way it's supposed to work is that you follow	17 y'all talk about in that meeting?
18 the chain of command as far as promotions.	18 A. Basically what was presented at the meeting was
19 Q. So you gave Chief Langley -- I guess he was	19 basically what has been going on as far as the
20 chief at that time -- some paperwork dealing	20 paperwork that had been submitted, those who was
21 with your complaints about team leaders?	21 in favor of, the review of whatever rules and
22 A. I presented to him a form that I had typed, and	22 regulations that was in place involving the
23 I asked him to, you know, sign it, him and Chief	23 division and the -- fire division and the City,
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1 Garrett both to sign it, if he was in agreement	1 and basically where they were and what they was
2 of it. And he told me no, and he would not	2 going to do or what they was, you know, planning
3 sign. So did Chief Garrett, which Chief Garrett	3 to do.
4 was acting as a witness.	4 Q. What was it they were planning to do?
5 Q. What was your paperwork, just the gist of it?	5 A. They was planning to go forward with the title
6 A. Basically it was just, you know, from -- I guess	6 change from team leaders to lieutenants.
7 it was drawn upon and presented to him based	7 Q. And what was your response or reaction?
8 upon what I had heard. And being that I was	8 A. Well, I tried to remain as calm and professional
9 called to his office to sign this form in	9 as I possibly could. Nevertheless, things got a
10 reference to, then therefore I presented to him	10 little out of order with Mr. Turner and
11 what I would like to have if this is the case.	11 Mr. Allen. So at that point I kind of thought
12 Q. And what is it that you would like to have?	12 things was out of hand. So therefore I just
13 A. I wanted a title change.	13 renamed calm until I could actually speak on my
14 Q. So you knew then even before you went to see	14 behalf in reference to what I thought.
15 Chief Langley that there were discussions about	15 Q. And how did it get out of hand with Turner and
16 a title change?	16 Allen?
17 A. I had heard rumors about a title change. When I	17 A. Apparently their reaction to it was their
18 was called to his office, of course, Chief	18 reaction. They reacted to it. They got up.
19 Garrett was with me. That's when it was	19 They seemed to get a little irate about it and
20 confirmed through me that, yes, there was	20 all that and -- Something I would have never
21 something going on with the title change.	21 done.
22 Q. And did you take Garrett with you?	22 Q. Do you remember any specific comments that
23 A. Yes, sir.	23 Turner or Allen made?

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<p>1 A. I recall a comment made by Turner when he was</p> <p>2 asking for a title change as well.</p> <p>3 Q. What did he want to be?</p> <p>4 A. I don't know. I don't know what he wanted to</p> <p>5 be, being he was a firefighter. I don't know.</p> <p>6 Q. Do you remember him making the statement that he</p> <p>7 didn't have any opposition to team leaders being</p> <p>8 lieutenants as long as he became a lieutenant?</p> <p>9 A. I don't recall that, Mr. Morgan. I'm sorry.</p> <p>10 Q. Did you eventually make some verbal response to</p> <p>11 what you had heard?</p> <p>12 A. Yes, sir, I did.</p> <p>13 Q. And what did you say?</p> <p>14 A. Basically what I did, Mr. Morgan, is when</p> <p>15 everything calmed down to a certain point, I</p> <p>16 asked to speak to Mr. James in private. He</p> <p>17 accepted my request.</p> <p>18 Q. What did y'all talk about?</p> <p>19 A. Basically I told Mr. James -- I thanked him for</p> <p>20 calling me in and letting me know what was</p> <p>21 officially going on and working with me to bring</p> <p>22 me up to par. But at the same time, I told</p> <p>23 Mr. James that there was a problem at the Auburn</p>	<p>1 in those words. But, again, I specifically</p> <p>2 directed to him that there was a problem at the</p> <p>3 Auburn Fire Division and he needed to look into</p> <p>4 it.</p> <p>5 Q. Anything else that you recall saying to</p> <p>6 Mr. James in y'all's private meeting?</p> <p>7 A. No, sir. It was just very brief and very to the</p> <p>8 point.</p> <p>9 Q. Anything else you recall saying in the meeting</p> <p>10 with everyone other than asking to speak</p> <p>11 privately with Mr. James?</p> <p>12 A. I can't think of nothing else at this time,</p> <p>13 Mr. Morgan.</p> <p>14 Q. Turner and Allen, you testified they became</p> <p>15 irate and I think in your opinion probably acted</p> <p>16 unprofessional?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Did they leave before you asked to speak to Bill</p> <p>19 James or did --</p> <p>20 A. I don't know exactly when they left, but at that</p> <p>21 point when everything appeared to have calmed</p> <p>22 down, I asked to speak to Mr. James in private.</p> <p>23 And, you know, as far as how they departed and</p>
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<p>1 Fire Division and he needed to look into it.</p> <p>2 Q. What was that problem?</p> <p>3 A. Basically there was some things taking place</p> <p>4 down there that I deemed unfair, that I deemed</p> <p>5 inconsistent, that basically needed some</p> <p>6 attention, needed to be looked into and</p> <p>7 corrected before it got any worse.</p> <p>8 Q. And tell me what they are.</p> <p>9 A. Well, I mean --</p> <p>10 Q. Did you give him some specifics or --</p> <p>11 A. No, sir. I didn't tell him anything specific</p> <p>12 because at that time I thought -- it was several</p> <p>13 things going on, and that's just me thinking</p> <p>14 that. I'm speaking for myself.</p> <p>15 Q. Well, did you tell Bill James what things were</p> <p>16 going on that you thought were unfair or</p> <p>17 inconsistent or needed attention?</p> <p>18 A. I was not specific with that, Mr. Morgan.</p> <p>19 Q. And what was Mr. James' response to your saying</p> <p>20 that things were unfair or inconsistent?</p> <p>21 A. Mr. James was very, very considerate. He was</p> <p>22 very polite and very professional, and he say he</p> <p>23 want everything to be right for everybody, not</p>	<p>1 how they left, I really don't know.</p> <p>2 Q. Did you come back into the main meeting or did</p> <p>3 you leave --</p> <p>4 A. No, sir, I didn't leave. Me and Mr. James did</p> <p>5 not leave. Everybody else left, and me and</p> <p>6 Mr. James stayed.</p> <p>7 Q. So they were gone and just the two of y'all?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And then the name change was eventually approved</p> <p>10 from team leader to lieutenant?</p> <p>11 A. Yes, sir, it was approved.</p> <p>12 Q. Are there any people or team leaders who in your</p> <p>13 opinion are not qualified to serve as</p> <p>14 lieutenants?</p> <p>15 A. I'm not in that position to say if they are</p> <p>16 qualified or not, Mr. Morgan. All I know is</p> <p>17 they applied and they were promoted.</p> <p>18 Q. Now, let's backtrack a minute.</p> <p>19 A. Yes, sir.</p> <p>20 Q. My understanding is, I guess from your testimony</p> <p>21 so I want to be clear on this, there had earlier</p> <p>22 been a name change from captain to battalion</p> <p>23 chief.</p>

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<p>1 A. That's when it all started, yes, sir.</p> <p>2 Q. When did that occur?</p> <p>3 A. I'm not sure on the date, Mr. Morgan, but I know</p> <p>4 it happened -- I think it happened within the</p> <p>5 past five years. But, understand, that's when</p> <p>6 the whole title change thing came about. You</p> <p>7 had all the captains made a proposal to the city</p> <p>8 manager at the time. And to make a long story</p> <p>9 short, it happened. So from that point, it just</p> <p>10 went on.</p> <p>11 Q. Did you have any conversations with anybody that</p> <p>12 would have been involved in that process? And</p> <p>13 I'm assuming that's going to be the city</p> <p>14 manager, from what you've testified, the</p> <p>15 captains, deputy chief, and chief. Did you have</p> <p>16 any conversations with any of those people about</p> <p>17 the name change from captain to battalion chief?</p> <p>18 A. No, sir.</p> <p>19 Q. Did you have any conversations with any of these</p> <p>20 people that you've sued in this lawsuit: Larry</p> <p>21 Langley, Lee Lamar, Bill Ham, Jr., Steven</p> <p>22 Reeves, Bill James, Charles Duggan, and Cortez</p> <p>23 Lawrence? Did you have any conversations with</p>	<p>1 battalion chiefs? How would that be announced?</p> <p>2 A. If I'm thinking correctly, Mr. Morgan, it came</p> <p>3 from a memorandum or a letter directed to the</p> <p>4 division. And, of course, when it occurred,</p> <p>5 word of mouth.</p> <p>6 Q. And at that point captains were then referred to</p> <p>7 as battalion chiefs?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Did you make any formal complaint either through</p> <p>10 the grievance procedure or EEOC protesting the</p> <p>11 change from captain to battalion chief?</p> <p>12 A. No, sir.</p> <p>13 Q. Did you make any verbal complaints to Langley or</p> <p>14 Lamar or Ham or Reeves or Bill James or Charles</p> <p>15 Duggan?</p> <p>16 A. No, sir.</p> <p>17 Q. And from your observations, did the battalion</p> <p>18 chiefs continue to operate similar to what the</p> <p>19 captains had done before?</p> <p>20 A. Basically the only thing that changed was the</p> <p>21 title. The responsibilities and all that went</p> <p>22 hand in hand.</p> <p>23 Q. When did you learn there would be a promotion</p>
Page 75	Page 77
<p>1 any of them --</p> <p>2 A. No, sir.</p> <p>3 Q. -- about the name change from --</p> <p>4 A. Other than the meeting that I had with Mr. Allen</p> <p>5 and Mr. Turner, that's the only time I conversed</p> <p>6 with Mr. Reeves. That was in reference to team</p> <p>7 leader to a lieutenant. But nothing about -- I</p> <p>8 didn't have no dealings, didn't know how they</p> <p>9 was doing it or what they were doing in</p> <p>10 reference to captain to battalion chief.</p> <p>11 Q. Was Cortez Lawrence still employed with the City</p> <p>12 when the name change occurred?</p> <p>13 A. To my knowledge, no.</p> <p>14 Q. He left --</p> <p>15 A. Years ago.</p> <p>16 Q. -- years ago, didn't he?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Do you know why he's been sued?</p> <p>19 A. I have no idea.</p> <p>20 MR. HORSLEY: Off the record.</p> <p>21 (Brief off-the-record discussion.)</p> <p>22 Q. How was it announced, official announcement,</p> <p>23 that from this day forward captains will now be</p>	<p>1 procedure or process to battalion chief?</p> <p>2 A. I received it through a memorandum or a letter</p> <p>3 directed to the division.</p> <p>4 Q. And did you receive it the same day or within a</p> <p>5 day or two of the memorandum being published?</p> <p>6 A. Basically, if I'm thinking correctly, it was</p> <p>7 posted. I think it was done in two places: At</p> <p>8 the stations and through e-mail -- City e-mail.</p> <p>9 Q. The City has an e-mail? They send out things on</p> <p>10 e-mail?</p> <p>11 A. Yes, sir.</p> <p>12 Q. As an employee do you receive those e-mails on</p> <p>13 duty or can you receive them off duty?</p> <p>14 A. The information -- I don't know what procedures</p> <p>15 they use to send the information, but they send</p> <p>16 them as far as I know randomly. It could come</p> <p>17 on a day when I'm at work. It could come on a</p> <p>18 day when I'm off work.</p> <p>19 Q. Do you have a home computer?</p> <p>20 A. Yes, sir, I do.</p> <p>21 Q. Can you check the City of Auburn Web site --</p> <p>22 A. Yes, sir.</p> <p>23 Q. -- for these e-mails from home?</p>



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<p>1 A. Yes, sir.</p> <p>2 (Defendant's Exhibits 1 and 2 marked</p> <p>3 for identification.)</p> <p>4 Q. Let me show you what I'm marking as Defendant's</p> <p>5 Exhibit Number 1. Let me show you 1 and 2.</p> <p>6 Does Defendant's Exhibit Number 1 appear to be</p> <p>7 the posting for the position of battalion chief?</p> <p>8 A. It appears to be, yes, sir.</p> <p>9 Q. Is that what would have been posted in, you</p> <p>10 said, two places: the stations and -- Where was</p> <p>11 the other place it would have been posted?</p> <p>12 A. E-mail.</p> <p>13 Exhibit 1 was posted at the station.</p> <p>14 Q. And I think it's dated February 16.</p> <p>15 A. Yes, sir. 2006.</p> <p>16 Q. And would it be fair to say that you would have</p> <p>17 observed that either February 16 or within a day</p> <p>18 or two of that day?</p> <p>19 A. Within that week, yes, sir, I would have</p> <p>20 observed it.</p> <p>21 Q. And in addition to it being posted at stations,</p> <p>22 that job notice is also sent out by e-mail?</p> <p>23 A. Well, you haven't gotten to Exhibit 2 yet, but</p>	<p>1 any objection at that time to -- Let me back up.</p> <p>2 I assume you would have received that</p> <p>3 e-mail -- Is that memo also posted or is it just</p> <p>4 sent by e-mail?</p> <p>5 A. I recall seeing one on the board just like this</p> <p>6 one around the station, but it could easily be</p> <p>7 somebody got a copy of the e-mail and put it up</p> <p>8 there. I don't know.</p> <p>9 Q. Is it fair to say you would have received that</p> <p>10 e-mail or observed that memo either February 17</p> <p>11 or within a day or two thereafter?</p> <p>12 A. Give or take within a week, yes, sir.</p> <p>13 Q. And did you make any complaints at that time to</p> <p>14 anybody about the written exam being a component</p> <p>15 of the assessment process?</p> <p>16 A. No, sir.</p> <p>17 (Defendant's Exhibit 3 marked for</p> <p>18 identification.)</p> <p>19 Q. And let me show you what's going to be marked as</p> <p>20 Defendant's Exhibit Number 3, which is another</p> <p>21 memo dated February 23, which discovered that</p> <p>22 non-probationary firefighters and probationary</p> <p>23 lieutenants were eligible and reaffirmed when</p>
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<p>1 this one here, I think I saw it on e-mail.</p> <p>2 Q. I'm going to get to Number 2.</p> <p>3 A. But this one I saw in the station only.</p> <p>4 Q. Is Number 1 also sent by e-mail?</p> <p>5 A. I haven't seen nothing like this sent on e-mail.</p> <p>6 Q. But it's posted in the station?</p> <p>7 A. Yes, sir.</p> <p>8 Q. All right. And then Defendant's Exhibit Number</p> <p>9 2 is the one that you received by e-mail?</p> <p>10 A. If I'm thinking correctly, sir, I did get a copy</p> <p>11 of this on e-mail.</p> <p>12 Q. And that's the memorandum I think you were</p> <p>13 testifying about earlier?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And it says you must be a current</p> <p>16 non-probationary lieutenant. It talks about an</p> <p>17 orientation session, and it says a written exam</p> <p>18 will be a component of the assessment process.</p> <p>19 Reading materials have been obtained.</p> <p>20 That's all in the e-mail that was sent on</p> <p>21 Exhibit 2, true?</p> <p>22 A. Yes, sir.</p> <p>23 Q. When you received that e-mail, did you register</p>	<p>1 the orientation was going to be. And that's</p> <p>2 dated February 23. I assume that you either saw</p> <p>3 or received that --</p> <p>4 A. Yes, sir, I did.</p> <p>5 Q. -- February 23rd or within a day or two of that?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Did you register any complaint for</p> <p>8 non-probationary firefighters or probationary</p> <p>9 lieutenants being eligible to apply for the</p> <p>10 battalion chief vacancy?</p> <p>11 A. When I read this, I was kind of puzzled due to</p> <p>12 the fact that why are probationary employees</p> <p>13 allowed to apply for this position, you know. I</p> <p>14 was somewhat familiar of the first memo. But</p> <p>15 when I received this one, it really puzzled me.</p> <p>16 But, no, sir, I did not make a complaint. I</p> <p>17 didn't say nothing. I just followed the</p> <p>18 procedures in place.</p> <p>19 Q. You didn't have any conversations with anyone</p> <p>20 about there being a written test component nor</p> <p>21 probationary -- non-probationary firefighters</p> <p>22 and probationary lieutenants being eligible. Is</p> <p>23 that a fair statement?</p>

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<p>1 A. Yes, sir, that's a fair statement.</p> <p>2 Q. And, now, I understand that at least in this</p> <p>3 lawsuit you've made some complaint about there</p> <p>4 being no non-probationary firefighters and</p> <p>5 probationary lieutenants being eligible. Were</p> <p>6 any non-probationary firefighters promoted to</p> <p>7 battalion chief as a result of this process?</p> <p>8 A. As a result of this process, no, sir.</p> <p>9 Q. Were any probationary lieutenants promoted to</p> <p>10 battalion chief as a result of this process?</p> <p>11 A. The only thing I can recall, Mr. Morgan, is I</p> <p>12 recall an incident where a probationary</p> <p>13 firefighter was promoted to team leader, and I</p> <p>14 also recall an incident where a firefighter was</p> <p>15 promoted to captain and then eventually promoted</p> <p>16 to acting fire chief.</p> <p>17 Q. Well, my question is: In terms of the</p> <p>18 complaints about the battalion chief promotion</p> <p>19 procedure in 2006, isn't it true that no</p> <p>20 non-probationary firefighters were promoted to</p> <p>21 battalion chief in 2006?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And were any probationary lieutenants promoted</p>	<p>1 provided the test for the division, CWH, I</p> <p>2 suppose. He was there. Chief Lamar was there,</p> <p>3 and I think vaguely Larry Langley was there.</p> <p>4 Q. You're not as certain on him, but you think he</p> <p>5 was?</p> <p>6 A. I think I recall seeing him there for a short</p> <p>7 period of time. Mr. Lamar pretty much handled</p> <p>8 everything.</p> <p>9 Q. Any other non-applicants you recall being there</p> <p>10 other than Stephanie King, Steve, the</p> <p>11 representative from CWH, Lee Lamar, or Larry</p> <p>12 Langley?</p> <p>13 A. No, sir, I don't recall anybody else.</p> <p>14 Q. The representative from CWH, was that a male or</p> <p>15 female?</p> <p>16 A. It was a white male.</p> <p>17 Q. Look on that list and tell me who on that list</p> <p>18 was a non-probationary firefighter.</p> <p>19 A. According to this list, nobody on here that I'm</p> <p>20 aware of was a non-probationary firefighter.</p> <p>21 Q. Well, was everyone on that list a team leader</p> <p>22 with the exception of Chris Turner?</p> <p>23 A. Chris Turner was a career firefighter.</p>
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<p>1 to battalion chief?</p> <p>2 A. No, sir.</p> <p>3 (Defendant's Exhibit 4 marked for</p> <p>4 identification.)</p> <p>5 Q. Let me show you what I'm going to mark as</p> <p>6 Defendant's Exhibit Number 4. Do you recognize</p> <p>7 that as the sign-in sheet for the battalion</p> <p>8 chief assessment orientation, which was February</p> <p>9 28, 2006?</p> <p>10 A. Yes, sir. This is the sheet.</p> <p>11 Q. And is that your signature?</p> <p>12 A. Yes, sir, that's my signature.</p> <p>13 Q. And you attended that orientation?</p> <p>14 A. Yes, sir, I did.</p> <p>15 Q. How long was that orientation?</p> <p>16 A. If I'm thinking correctly, it was two to three</p> <p>17 hours.</p> <p>18 Q. Who conducted the orientation?</p> <p>19 A. It was several people there -- a couple of</p> <p>20 people there, Mr. Morgan. You had two</p> <p>21 representatives from human resources:</p> <p>22 Ms. Stephanie King, Mr. Reeves. You had a</p> <p>23 representative from the company who I guess</p>	<p>1 Q. And he was not a team leader or a lieutenant?</p> <p>2 A. No, sir.</p> <p>3 Q. Is he the only one on that list?</p> <p>4 A. Yes, sir.</p> <p>5 MR. HORSLEY: When you say team</p> <p>6 leader, you're referring to team</p> <p>7 leaders that have now been changed</p> <p>8 to lieutenant?</p> <p>9 MR. MORGAN: Right.</p> <p>10 Q. My point is: The only person on the list who</p> <p>11 was not a lieutenant via assessment center or</p> <p>12 team leader was Chris Turner, true?</p> <p>13 A. I'm not sure about Carson. He may have been.</p> <p>14 He may have not. I'm not really sure. But I</p> <p>15 know Chris Turner was a firefighter.</p> <p>16 Q. And he's a black male?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And the record will show this. I'm not --</p> <p>19 A. Yes, sir. I understand.</p> <p>20 Q. This isn't any test that you're going to pass or</p> <p>21 fail, but do you recognize the names of anybody</p> <p>22 else on the list other than Chris Turner that</p> <p>23 was a career firefighter that was not a team</p>

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<p>1 leader or hadn't been either a team leader or</p> <p>2 lieutenant? You said possibly Clay Carson?</p> <p>3 A. Yes, sir. I think Carson was a firefighter and</p> <p>4 recently became a lieutenant, but I'm not clear</p> <p>5 on him. For the record, I know Chris Turner was</p> <p>6 a firefighter.</p> <p>7 Q. There's no question Chris Turner was?</p> <p>8 A. No question.</p> <p>9 Q. And who on the list would have been a</p> <p>10 probationary lieutenant --</p> <p>11 A. No one.</p> <p>12 Q. -- at the time?</p> <p>13 A. If it was anybody, it was Carson.</p> <p>14 Q. And did Clay Carson score -- he's a white male,</p> <p>15 is he not?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Did he score high enough on the written test to</p> <p>18 go to the assessment portion of the battalion</p> <p>19 chief --</p> <p>20 A. That I recall, Clay Carson did not take the</p> <p>21 test.</p> <p>22 Q. Did not take the test. Okay.</p> <p>23 A. He wasn't there when I took it.</p>	<p>1 A. I think so.</p> <p>2 Q. And did the people that you've testified were</p> <p>3 there -- Stephanie King, Steve Reeves, Lee and</p> <p>4 the WCA's representative -- did they go over</p> <p>5 that document with you?</p> <p>6 A. A lot of things was discussed that day,</p> <p>7 Mr. Morgan. I can't specifically remember what</p> <p>8 was went over and what was discussed. But it</p> <p>9 was a lot of information involved, and</p> <p>10 everything that I think was presented was</p> <p>11 touched upon as far as orientation, yes, sir.</p> <p>12 Q. The bottom line is: It was explained to the</p> <p>13 applicants the testing process?</p> <p>14 A. Yes, sir. It was told to us basically how it</p> <p>15 would be implemented and worked and I guess</p> <p>16 scored and applied to whatever was going on.</p> <p>17 Q. And the percentages as to people taking the</p> <p>18 written test, who would be eligible to proceed</p> <p>19 on to the assessment program part of it?</p> <p>20 A. Basically the understanding I had when I was</p> <p>21 there was if you passed the written test, you</p> <p>22 proceed.</p> <p>23 Q. If you didn't pass the written test --</p>
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<p>1 Q. So we can take him out of the equation.</p> <p>2 A. If you choose to, yes, sir.</p> <p>3 Q. So the only career non-probationary firefighter</p> <p>4 who took the battalion chief written test who</p> <p>5 was not a lieutenant was Chris Turner, a black</p> <p>6 male?</p> <p>7 A. I know Chris Turner took the test.</p> <p>8 Q. Did you keep notes of the orientation session?</p> <p>9 A. I don't recall taking any notes. We were</p> <p>10 provided study material in reference to the test</p> <p>11 at some particular time or another. But, no,</p> <p>12 sir, I don't recall any notes I took during</p> <p>13 orientation.</p> <p>14 (Defendant's Exhibit 5 marked for</p> <p>15 identification.)</p> <p>16 Q. I'm going to mark this as Number 5. Did you</p> <p>17 receive this document at the orientation?</p> <p>18 A. It looks familiar, Mr. Morgan. Yes, sir.</p> <p>19 Q. And that is an Auburn Fire Division Orientation</p> <p>20 Manual. That's the title of it, true?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And you did receive that at the orientation</p> <p>23 session?</p>	<p>1 A. If you didn't pass, you didn't proceed.</p> <p>2 Q. You talked about a reading material or study</p> <p>3 material list. Did you receive a list -- I know</p> <p>4 you got some books. I'm going to get to that in</p> <p>5 a minute. Was there an actual list that was</p> <p>6 given out or was the list discussed or was it in</p> <p>7 that manual?</p> <p>8 A. The only thing I remember was that I was</p> <p>9 notified to come to the public safety building</p> <p>10 to Mr. Lamar's office and receive your study</p> <p>11 material.</p> <p>12 Q. But you were made aware in the orientation</p> <p>13 session that study materials would be provided?</p> <p>14 A. Yes, sir.</p> <p>15 Q. The person from CWH, do you recall anything that</p> <p>16 he said about the test, how the test was</p> <p>17 devised, the purpose of the test?</p> <p>18 A. I don't recall that, sir.</p> <p>19 Q. Did you make any complaint at the orientation</p> <p>20 session, which I think was February 28, 2006 --</p> <p>21 did you make any complaint at the orientation</p> <p>22 session about a written test?</p> <p>23 A. No, sir.</p>

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<p>1 Q. The people that were conducting the orientation,</p> <p>2 did they ask people -- the participants if they</p> <p>3 wanted to -- needed to ask questions or</p> <p>4 anything?</p> <p>5 A. That I recall, I think it was a time available</p> <p>6 for questioning throughout the whole --</p> <p>7 throughout the hours we were there, but I can't</p> <p>8 recall any specifics at this time. I know I</p> <p>9 can't.</p> <p>10 Q. Did you ask any questions?</p> <p>11 A. No, sir, I didn't.</p> <p>12 Q. Did Mr. Ogletree ask any questions?</p> <p>13 A. I'm not aware of that, sir, if he did or not.</p> <p>14 Q. How about Chris Turner?</p> <p>15 A. I'm not aware of that either, sir.</p> <p>16 Q. Did anybody complain about a written test being</p> <p>17 part of the promotion procedure at the</p> <p>18 orientation?</p> <p>19 A. I'm not aware of anybody complaining,</p> <p>20 Mr. Morgan.</p> <p>21 Q. And I know this was, what, two years ago and a</p> <p>22 three-hour session, but just as best you can</p> <p>23 remember, tell me what you recall Stephanie</p>	<p>1 words, and then he turned things over to the</p> <p>2 representative from CWH.</p> <p>3 Q. Do you recall Steve Reeves explaining any of the</p> <p>4 testing procedures or what would be -- which the</p> <p>5 applicants would go through?</p> <p>6 A. I don't remember, sir. I'm sorry. I don't</p> <p>7 recall that.</p> <p>8 Q. Do you remember Steve Reeves saying anything</p> <p>9 about how the procedure was developed?</p> <p>10 A. I don't remember, sir. I'm sorry.</p> <p>11 Q. Do you remember Steve Reeves saying anything</p> <p>12 about how it was determined that there would be</p> <p>13 a written test and then you would go from the</p> <p>14 written test if you passed to the remainder of</p> <p>15 it, the assessment part? Do you remember any of</p> <p>16 that from Mr. Reeves?</p> <p>17 A. The only person I recall saying that or</p> <p>18 explaining in detail how it would work was the</p> <p>19 representative for CWH. But I don't recall -- I</p> <p>20 can't remember if he did or not -- did say that,</p> <p>21 Mr. Morgan. I don't remember.</p> <p>22 Q. "He" being Steve Reeves?</p> <p>23 A. Yes.</p>
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<p>1 King's role being at that session.</p> <p>2 A. The first person I saw when I came to</p> <p>3 orientation that I guess had something to do</p> <p>4 with presenting the material was Ms. King. She</p> <p>5 was actually setting up the projectile and all</p> <p>6 that in the room I guess preparing everything</p> <p>7 for presentation.</p> <p>8 Q. Did you have any conversation with Stephanie?</p> <p>9 A. Other than hello; how are you doing; good to see</p> <p>10 you, no, sir.</p> <p>11 Q. Do you remember anything that she said or</p> <p>12 contributed to the orientation session other</p> <p>13 than setting up the equipment?</p> <p>14 A. From what I experienced and saw, it looked as if</p> <p>15 Ms. King or Mr. Reeves was working together to</p> <p>16 do whatever they had to do as far as human</p> <p>17 resources. But vaguely do I recall Ms. King</p> <p>18 saying anything in reference to. She was</p> <p>19 present with Mr. Reeves.</p> <p>20 Q. What about Steve Reeves? What do you recall his</p> <p>21 role being?</p> <p>22 A. Mr. Reeves made a brief presentation in</p> <p>23 reference to welcoming everybody in so many</p>	<p>1 Q. What about Larry Langley? What was his role or</p> <p>2 what did he contribute to the --</p> <p>3 A. That I remember, Mr. Langley walked in the room</p> <p>4 before we even got started and left, and I never</p> <p>5 saw him again.</p> <p>6 Q. And Lee Lamar, what do you recall his input or</p> <p>7 participation being?</p> <p>8 A. Mr. Lamar was there, that I recall, for the</p> <p>9 entire time of the orientation. And I vaguely</p> <p>10 remember him having some input, if he was</p> <p>11 questioned about it, in reference to the</p> <p>12 division itself and all that. That's basically</p> <p>13 all I remember on that.</p> <p>14 Q. Do you remember Lee saying anything specifically</p> <p>15 about how the test was developed?</p> <p>16 A. No, sir.</p> <p>17 Q. Do you remember Lee saying anything specifically</p> <p>18 about how the components were derived and</p> <p>19 processed, came about?</p> <p>20 A. I don't remember that, sir.</p> <p>21 Q. Tell me what you recall the CWH representative</p> <p>22 saying about the test.</p> <p>23 A. Basically he was saying that the questions was</p>

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1 drawn from whatever procedures they have, and  
 2 they had been representing several cities or  
 3 municipalities around the nation, you know.  
 4 Just told us a little bit about the company  
 5 within itself, and he started going over the  
 6 material. I think he had a slide presentation,  
 7 and we just gradually worked through the whole  
 8 orientation process of that evening.  
 9 Q. What do you recall the slide presentation being  
 10 about?  
 11 A. I think it was in reference to the study  
 12 material we had, the things to study or  
 13 something of that nature. But I can't  
 14 specifically remember what it was pertaining to.  
 15 Q. Do you remember if the CWH representative  
 16 explained to the participants that questions  
 17 would be drawn from these study materials?  
 18 A. It's a great chance he could have said that, but  
 19 I just don't remember at this time, Mr. Morgan.  
 20 I'm sorry.  
 21 Q. What was your understanding as to the purpose of  
 22 the study materials?  
 23 A. My understanding of the study material was it

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1 was given because -- supposedly it was in  
 2 reference to the test that was being given.  
 3 That's the understanding I had.  
 4 Q. The study materials would help you on the test?  
 5 A. Supposedly help us on the test.  
 6 Q. Now, anything else specific that you recall from  
 7 the CWH representative?  
 8 A. No, sir, I don't. I don't recall anything.  
 9 Q. Did the representative from CWH go over any  
 10 sample questions with you and the other  
 11 participants at that orientation?  
 12 A. I don't remember Mr. Morgan. We went over so  
 13 much within those hours, I just don't remember.  
 14 Q. What was your understanding from the orientation  
 15 session and what you were being told as to how  
 16 the questions were developed? What was your  
 17 understanding as to why the questions that you  
 18 were going to be asked were going to be those  
 19 questions?  
 20 A. I don't have any idea on how they drew up their  
 21 questions. I don't have a clue.  
 22 Q. The reading materials that were discussed, did  
 23 they all relate to fire duties?

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1 A. They were actually -- If I remember correctly,  
 2 they were essentials of some sort in the field  
 3 of firefighting.  
 4 Q. Were any of them related more to supervision  
 5 than firefighting, or were they all -- as you  
 6 heard it, did they all appear to be related to  
 7 what you would be doing as an officer?  
 8 MR. HORSLEY: The study materials?  
 9 MR. MORGAN: Yeah.  
 10 A. From what I looked at and what was presented to  
 11 me, Mr. Morgan, the material was of an advanced  
 12 level. And what I consider to be an advanced  
 13 level is a management position within the fire  
 14 division.  
 15 Q. And the battalion chief is an advanced level, is  
 16 it not?  
 17 A. Yes, sir.  
 18 Q. That's what --  
 19 A. Superior, advanced, you know. Yes, sir.  
 20 Q. That's the next rank below the deputy chief?  
 21 A. Yes, sir. In the Auburn Fire Division.  
 22 Q. Well, the discussion from the CWH representative  
 23 as to the test and what would be included and

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1 what was expected, did it appear to be related  
 2 to what a person would do as a supervisory  
 3 officer in the Auburn Fire Department?  
 4 A. Now, that was a question. I mean, we have ways  
 5 we do things in Auburn, and people have ways  
 6 they do things in Montgomery. But the  
 7 essentials itself I guess was the appropriate or  
 8 the common way or the popular way, however they  
 9 put it, that they think something should  
 10 happen. I mean, it didn't directly apply to the  
 11 way we do things in Auburn, but it was  
 12 officially essential in reference to, you know,  
 13 advanced positions of that nature.  
 14 Q. The discussion in your opinion was that these  
 15 were essential functions of that rank, but it  
 16 may not be the way we do it in Auburn?  
 17 A. Yes, sir.  
 18 Q. And did you register any complaint with the WCH  
 19 representative about those type questions being  
 20 asked on the test?  
 21 A. No, sir.  
 22 Q. Did anybody?  
 23 A. I'm not aware of that, sir. If somebody did,



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<p>1 I'm not aware of it.</p> <p>2 Q. Do you know what input into the written test any</p> <p>3 officers with the City of Auburn Fire Division</p> <p>4 had?</p> <p>5 A. There were rumors that the battalion chiefs at</p> <p>6 the time played a role in some part of it, but I</p> <p>7 don't know. I'm not aware if they did. I'm not</p> <p>8 aware what part they played.</p> <p>9 Q. Let's assume that the battalion chiefs at Auburn</p> <p>10 played a role in the written test that was</p> <p>11 developed for the position of battalion chief.</p> <p>12 Would you agree with me that that would be a</p> <p>13 good thing?</p> <p>14 MR. HORSLEY: Object to the form. You</p> <p>15 can answer if you know how.</p> <p>16 A. I think just like with team leaders,</p> <p>17 lieutenants, the whole nine, I think battalion</p> <p>18 chiefs should play a role in the overall</p> <p>19 promotionary procedure. Now, the test, I'm not</p> <p>20 sure about that.</p> <p>21 Q. Not sure about what, whether they did or not?</p> <p>22 A. I'm not sure if they played a role in the</p> <p>23 questions that was on the test. I'm not sure of</p>	<p>1 Q. Do you know of any special meetings or</p> <p>2 orientation sessions that white applicants had</p> <p>3 with these people that were there, including the</p> <p>4 CWH representative, that you were not a part of?</p> <p>5 A. To my knowledge, no, sir, I don't know anything</p> <p>6 about that.</p> <p>7 Q. As far as you know, everybody attended the same</p> <p>8 orientation session. You have no evidence</p> <p>9 otherwise?</p> <p>10 A. No evidence otherwise.</p> <p>11 Q. And as far as you know, that was the only</p> <p>12 orientation session that was given, true?</p> <p>13 A. That's all I know, yes, sir.</p> <p>14 MR. HORSLEY: Is this a decent time</p> <p>15 for a break?</p> <p>16 MR. MORGAN: Yeah.</p> <p>17 (Lunch recess.)</p> <p>18 (Defendant's Exhibits 6, 7 and 8</p> <p>19 marked for identification.)</p> <p>20 Q. (Continuing by Mr. Morgan) Let me show you what</p> <p>21 I'm marking as three exhibits, 6, 7, and 8. Do</p> <p>22 you recall receiving Exhibit 6, which is a memo,</p> <p>23 letter, to the candidates outlining the dates</p>
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<p>1 that.</p> <p>2 Q. And I understand that you've testified to that.</p> <p>3 My question is: Assume they did. Would you</p> <p>4 agree with me that battalion chiefs playing a</p> <p>5 role in helping develop the written test, if</p> <p>6 that occurred, would be a good thing?</p> <p>7 MR. HORSLEY: Object to the form. You</p> <p>8 can answer.</p> <p>9 A. That would be a good resource, yes, sir.</p> <p>10 Q. Was there anything that the representative from</p> <p>11 CWH said at the orientation session that day</p> <p>12 that would be included on the test, whether it</p> <p>13 was a written test or the assessment part of it,</p> <p>14 that you thought didn't have anything to do with</p> <p>15 fire work?</p> <p>16 A. I don't recall anything, Mr. Morgan. I mean, he</p> <p>17 was presenting information that was available</p> <p>18 that I guess was being directed to the</p> <p>19 candidates, which was me and all the others that</p> <p>20 was present.</p> <p>21 Q. Are you aware of any orientation sessions other</p> <p>22 than this one?</p> <p>23 A. This is the only one I can recall.</p>	<p>1 and guidelines for the exam? Do you recall</p> <p>2 receiving that?</p> <p>3 A. Yes, sir, I do.</p> <p>4 Q. Would you have received that on or about March</p> <p>5 3, 2006?</p> <p>6 A. Yes, sir, on or about.</p> <p>7 Q. And the next two exhibits, 7 and 8, both of them</p> <p>8 say they are the battalion chief reading list</p> <p>9 check-out sheet, and they have your signature on</p> <p>10 both of these. Signature on one and initials --</p> <p>11 yeah -- Signatures and initials on both.</p> <p>12 A. Yes, sir.</p> <p>13 Q. And those are both dated March 3, 2006, true?</p> <p>14 A. Yes, sir, they are.</p> <p>15 Q. When you signed these 7 and 8, would you have</p> <p>16 received -- by that time would you already have</p> <p>17 received Defendant's Exhibit Number 6, which is</p> <p>18 the letter outlining the dates and guidelines?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Now, the one that I guess that's Exhibit 7 has</p> <p>21 your signature, and then it has some initials</p> <p>22 and then it has a number, number 14. I guess</p> <p>23 that's a book number that you received?</p>

## Deposition of Gerald Stephens

May 30, 2008

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<p>1 A. I don't remember specifically what it applies</p> <p>2 to. But, yes, it has the number 14.</p> <p>3 Q. And to the left of that are initials. Do you</p> <p>4 know whose initials those are?</p> <p>5 A. On Exhibit Number 7 or which one are we on right</p> <p>6 now?</p> <p>7 Q. Yeah. Look to the right of where you signed.</p> <p>8 A. Right here?</p> <p>9 Q. Yeah. In fact, let's look -- look at your</p> <p>10 signature. It's got Gerald Stephens, 3/7/06, at</p> <p>11 something.</p> <p>12 A. Yes, sir. On the day I signed this form, it was</p> <p>13 March 7, 2006 at 0850 hours, at 8:50 a.m., that</p> <p>14 morning.</p> <p>15 Q. You signed it on March 7 rather than March 6?</p> <p>16 A. Yes, sir.</p> <p>17 Q. I'm sorry. March 3.</p> <p>18 Why did you sign it on March 7?</p> <p>19 A. It had to be when I was on duty that day. That</p> <p>20 would be the only reason.</p> <p>21 Q. And then continuing on, it's got, looks like,</p> <p>22 ZZZ. It looks like numbers to me. Are those</p> <p>23 your initials?</p>	<p>1 A. I received a couple of books when I would</p> <p>2 receive my material. I can't remember which</p> <p>3 ones they were and the titles of them, but I do</p> <p>4 recall them being some sort of essential or</p> <p>5 another in reference to firefighting.</p> <p>6 Q. Essential?</p> <p>7 A. Yes, sir.</p> <p>8 (Defendant's Exhibit 9 marked for</p> <p>9 identification.)</p> <p>10 Q. Let me show you what I'm going to mark as</p> <p>11 Defendant's Exhibit Number 9. I apologize. Is</p> <p>12 that your application for the promotion to</p> <p>13 battalion chief?</p> <p>14 A. Yes, sir. That's it.</p> <p>15 Q. And what day did you fill that out or sign it?</p> <p>16 A. I signed it on February 20, 2006, on a Monday.</p> <p>17 Q. Now, between the orientation session, which was</p> <p>18 February 28 of '06, and your signing for the</p> <p>19 books on March 7, 2006, do you recall anything</p> <p>20 during that period of time that occurred in</p> <p>21 relation to the battalion chief promotion?</p> <p>22 A. I don't recall anything, Mr. Morgan.</p> <p>23 Q. Did you discuss with any of the people who had</p>
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<p>1 A. No, sir. Those are not mine.</p> <p>2 Q. And how about the number 14? Is that your</p> <p>3 handwriting or is that someone else's</p> <p>4 handwriting?</p> <p>5 A. That's somebody else's handwriting.</p> <p>6 Q. But that's your signature?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And Defendant's Exhibit Number 8, books, it's</p> <p>9 got the number of books, number 14. Is that</p> <p>10 your signature?</p> <p>11 A. Yes, sir. Those are my initials.</p> <p>12 Q. And is the number 14 yours as well or did</p> <p>13 somebody else write that in?</p> <p>14 A. Somebody else wrote 14.</p> <p>15 Q. And do you remember if you signed Defendant's</p> <p>16 Exhibit 8 on March 3rd or did you sign it on</p> <p>17 March 7th?</p> <p>18 A. I'm going to guess and say I signed it on the</p> <p>19 7th.</p> <p>20 Q. The same day would be your best guess?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Do you remember what you received as book number</p> <p>23 14?</p>	<p>1 been involved in the orientation -- Lee, Steve,</p> <p>2 Stephanie, the CWH representative, or Chief</p> <p>3 Langley -- did you have any discussions with</p> <p>4 them up until the time you received your books</p> <p>5 on March 7? Anything about the procedure or the</p> <p>6 test or any conversations with any of those</p> <p>7 people?</p> <p>8 A. No, sir, I don't recall.</p> <p>9 Q. How about the folks that you've sued in this</p> <p>10 case -- other people that you've sued: Bill</p> <p>11 Ham, Bill James, Charles Duggan? Did you have</p> <p>12 any conversations with any of them --</p> <p>13 A. No, sir.</p> <p>14 Q. -- up until March 7 about the test or how it</p> <p>15 would be administered? Anything to do with the</p> <p>16 test?</p> <p>17 A. No, sir.</p> <p>18 Q. Do you recall where you were when you received</p> <p>19 the -- signed the form and received the books?</p> <p>20 A. As I stated, Mr. Morgan, I think I was on duty</p> <p>21 that day.</p> <p>22 Q. Did somebody bring you the books and the form?</p> <p>23 A. No, sir. I had to go to the public safety</p>

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<p>1 office to Chief Lamar's office.</p> <p>2 Q. And was Chief Lamar there?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Did you have any conversations with him when you</p> <p>5 signed about the test or books?</p> <p>6 A. No, sir.</p> <p>7 Q. Just said I'm here and signed it?</p> <p>8 A. Yes, sir.</p> <p>9 Q. So you had the letter from, I guess, Lee Lamar</p> <p>10 telling you that the written test was going to</p> <p>11 be on a certain day. I think it was April 10 or</p> <p>12 whatever is in the letter.</p> <p>13 A. Yes, sir.</p> <p>14 Q. And you had the books that you had received from</p> <p>15 the City, and you had your orientation booklet.</p> <p>16 Y'all got to keep these orientation booklets,</p> <p>17 didn't you, Defendant's Exhibit 5?</p> <p>18 A. I don't think we got to keep these. I'm not</p> <p>19 real sure on that.</p> <p>20 Q. But you are sure you got to keep the books or at</p> <p>21 least --</p> <p>22 A. Oh, yes. Most definitely, sir.</p> <p>23 Q. Is there anything of any significance that</p>	<p>1 A. No, sir.</p> <p>2 Q. The mayor, Bill James, and Charles Duggan, you</p> <p>3 didn't have any conversations with them up to</p> <p>4 April 10 about the test in any fashion, true?</p> <p>5 A. No, sir. True.</p> <p>6 Q. Tell me what you did to study and prepare for</p> <p>7 the test.</p> <p>8 A. Being the time I had to study all that</p> <p>9 material -- First of all, I reviewed all the</p> <p>10 material that was available. And I took it upon</p> <p>11 myself to just study areas where I thought to be</p> <p>12 important. Like I say, we didn't have that much</p> <p>13 time or I don't think we had enough time to</p> <p>14 actually study all the material that was</p> <p>15 available. So I took it upon myself to apply</p> <p>16 myself to areas where I thought I needed to</p> <p>17 study and work on to prepare or be ready for</p> <p>18 this test. And that was just the way I was</p> <p>19 thinking about it, Mr. Morgan.</p> <p>20 Q. Did you have study groups? Firefighters get</p> <p>21 together and have study groups?</p> <p>22 A. I did not.</p> <p>23 Q. You did not?</p>
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<p>1 occurred in relation to the promotion procedure</p> <p>2 from the time you received your books on March 7</p> <p>3 up until the time you start taking the written</p> <p>4 test, which I think is April 10?</p> <p>5 A. Can you repeat the first part? It slipped my</p> <p>6 mind. I'm sorry.</p> <p>7 Q. You received the books on March 7 at Deputy --</p> <p>8 at that time -- Lee Lamar's office, and I think</p> <p>9 the test began April 10. Anything of any</p> <p>10 significance between that time period that</p> <p>11 relates to the promotion procedure? Did</p> <p>12 anything occur during that time period?</p> <p>13 A. Not that I can recall, sir.</p> <p>14 Q. Did you have any conversations with Lee or Larry</p> <p>15 Langley or Steve Reeves or Stephanie up until</p> <p>16 you start taking the written test on April 10?</p> <p>17 A. No, sir.</p> <p>18 Q. Other than what may have occurred at the</p> <p>19 orientation?</p> <p>20 A. No, sir.</p> <p>21 Q. And you never had any conversations up to that</p> <p>22 time with the mayor or Charles Duggan or Steve</p> <p>23 Reeves?</p>	<p>1 A. No, sir.</p> <p>2 Q. How many study books did you have?</p> <p>3 A. I can't remember the exact number, but three to</p> <p>4 four books.</p> <p>5 Q. Did you have to turn those back in?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Did you make any complaint to anybody before you</p> <p>8 sat down for the written test that you didn't</p> <p>9 have enough time to study?</p> <p>10 A. Anybody as in ...</p> <p>11 Q. Lee Lamar.</p> <p>12 A. The one person that I did talk about in the</p> <p>13 study time and all that, he's in this room</p> <p>14 now and that's Mr. Ogletree.</p> <p>15 Q. You had those conversations with Mr. Ogletree?</p> <p>16 A. Yes, sir. I told him just what I thought about</p> <p>17 the time span and the material that was</p> <p>18 available to study, and I told him what I</p> <p>19 thought about it.</p> <p>20 Q. Well, I'm going to get to that. Let me go</p> <p>21 through my little list.</p> <p>22 You didn't have any conversations with Larry</p> <p>23 Langley complaining about the time you had to</p>



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<p>1 study, did you?</p> <p>2 A. Larry Langley, no.</p> <p>3 Q. No conversations with Lee Lamar about the period</p> <p>4 of time for study, did you?</p> <p>5 A. Mr. Lamar, no.</p> <p>6 Q. No conversations with Bill Ham about the period</p> <p>7 of time you had to study?</p> <p>8 A. Mayor Ham, no.</p> <p>9 Q. No conversation with Steve Reeves about the</p> <p>10 period of time you had to study?</p> <p>11 A. Mr. Reeves, no.</p> <p>12 Q. No conversations with Bill James about the</p> <p>13 period of time you had to study?</p> <p>14 A. Mr. James, no.</p> <p>15 Q. No conversations with Charles Duggan about the</p> <p>16 time you had to -- period of time you had to</p> <p>17 study?</p> <p>18 A. Charles Duggan, no.</p> <p>19 Q. And none with Stephanie king?</p> <p>20 A. Ms. King, no.</p> <p>21 Q. And none with any representative of CWH?</p> <p>22 A. No representatives, no.</p> <p>23 Q. And so you and I will be together on this, I'm</p>	<p>1 were the recommended reading for the test, you</p> <p>2 studied the fire department SOPs and you studied</p> <p>3 the personnel policies?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Now, did anybody recommend or suggest that you</p> <p>6 study the SOPs for the battalion chief test?</p> <p>7 A. Nobody recommended it to me, sir.</p> <p>8 Q. Did anybody recommend or suggest that you study</p> <p>9 the personnel policies for this battalion chief</p> <p>10 test?</p> <p>11 A. No, sir. Nobody recommended it to me.</p> <p>12 Q. Any other sources that you studied or reviewed</p> <p>13 for the battalion chief test, now, that weren't</p> <p>14 on the recommended reading list, the books you</p> <p>15 were given by the City, other than the SOPs and</p> <p>16 personnel policies?</p> <p>17 A. No, sir. Those are the only outside two</p> <p>18 resources I studied in conjunction with what was</p> <p>19 given to me.</p> <p>20 Q. And other than the fact that you received your</p> <p>21 reading material on March 7 rather than March 3,</p> <p>22 did any of the other firefighters or candidates</p> <p>23 for this promotion have any additional period of</p>
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<p>1 not asking you questions about Cortez Lawrence</p> <p>2 because I'm understanding from your answers he</p> <p>3 didn't have anything to do with this. Is that a</p> <p>4 fair statement?</p> <p>5 A. To my knowledge he don't. I don't know nothing</p> <p>6 about that.</p> <p>7 Q. What conversations did you have with Eddie</p> <p>8 Ogletree about the time span?</p> <p>9 A. Basically I notified him and just asked him, you</p> <p>10 know, basically his opinion on the material that</p> <p>11 was presented and the time we had on it. And I</p> <p>12 just basically told him that I don't see where I</p> <p>13 think I would be able to cover all this, you</p> <p>14 know, in the time we had available. It was a</p> <p>15 lot of material. It was a lot to read. Plus,</p> <p>16 you know, the other information that I chose to</p> <p>17 pursue and study that I thought would be liable</p> <p>18 (sic) for the test, I studied that as well,</p> <p>19 stuff like SOP books, personnel policies, City</p> <p>20 personnel policies -- I'm sorry -- in</p> <p>21 conjunction with the material that was given for</p> <p>22 the actual test.</p> <p>23 Q. So in addition to the books that you were told</p>	<p>1 time to study than you did?</p> <p>2 A. I'm not aware of that, sir.</p> <p>3 Q. As far as we can tell from the documentation</p> <p>4 that I've presented to you today, everybody</p> <p>5 would have received the reading material on or</p> <p>6 about March 3; is that true?</p> <p>7 A. Yes, sir, on or about.</p> <p>8 Q. So the length of time would have been the same</p> <p>9 for black applicants, white applicants,</p> <p>10 lieutenant applicants, team leader lieutenant</p> <p>11 applicants, firefighter applicants? Everybody</p> <p>12 would have had the same time period. Is that a</p> <p>13 fair statement?</p> <p>14 A. Give or take one or two days depending on how</p> <p>15 the shift ran. Yes, sir, that's a true</p> <p>16 statement.</p> <p>17 Q. You make a reference in your complaint to test</p> <p>18 aids. What did you consider to be the test aids</p> <p>19 for the battalion chief promotion process?</p> <p>20 A. Could you be a little bit more specific about</p> <p>21 this?</p> <p>22 Q. I'll show you what I'm talking about.</p> <p>23 A. Okay.</p>

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<p>1 Q. Paragraph 18. You have on here -- I've</p> <p>2 highlighted it. Caucasian applicants for the</p> <p>3 position were given preferential treatment</p> <p>4 regarding the application process, test aids,</p> <p>5 and test grades.</p> <p>6 Do you see that in your complaint?</p> <p>7 A. Yes, sir.</p> <p>8 Q. What are the test aids that you're referring</p> <p>9 to? What did you consider to be the test aids</p> <p>10 for this promotion?</p> <p>11 A. I can't recall that, Mr. Morgan.</p> <p>12 Q. Well, let me ask this. You testified about an</p> <p>13 orientation.</p> <p>14 A. Yes, sir.</p> <p>15 Q. And you testified about receiving the books.</p> <p>16 A. Yes, sir.</p> <p>17 Q. Do you have knowledge of any white applicants</p> <p>18 for this position with battalion chief that</p> <p>19 received anything else that would help them on</p> <p>20 this test other than attending the orientation</p> <p>21 and reviewing the books that everyone was</p> <p>22 given? Anything else that you know of that</p> <p>23 white applicants received that you didn't</p>	<p>1 that you were denied during that period of time?</p> <p>2 A. I don't recall anything of that nature, sir.</p> <p>3 Q. Did you have your lawn service going on at that</p> <p>4 time?</p> <p>5 A. No, sir.</p> <p>6 Q. When did you say you started the lawn service?</p> <p>7 A. May of 2006.</p> <p>8 Q. Did you do any preparatory work for that?</p> <p>9 A. Basically I waited until everything was over</p> <p>10 with the battalion chief promotion before I even</p> <p>11 thought about starting a business. So no, sir,</p> <p>12 I didn't do anything.</p> <p>13 Q. How is that business set up? Is it a d/b/a or a</p> <p>14 corporation?</p> <p>15 A. D/b/a.</p> <p>16 Q. And who does your books?</p> <p>17 A. My wife. She has accounting resources</p> <p>18 knowledge, stuff like that.</p> <p>19 Q. And do you have -- I guess for tax purposes you</p> <p>20 keep your records on purchasing equipment --</p> <p>21 A. Yes, sir.</p> <p>22 Q. -- advertising, if you do any advertising --</p> <p>23 A. Yes, sir.</p>
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<p>1 receive?</p> <p>2 A. I'm not aware, Mr. Morgan. I haven't been</p> <p>3 introduced with that.</p> <p>4 Q. Do you know any white applicant who was given</p> <p>5 preferential treatment in the application</p> <p>6 process?</p> <p>7 A. I don't recall that, Mr. Morgan. It don't ring</p> <p>8 a bell.</p> <p>9 Q. Do you know any white applicant who was given</p> <p>10 preferential treatment in terms of test aids?</p> <p>11 A. Never presented to me, Mr. Morgan. I'm not</p> <p>12 aware of that.</p> <p>13 Q. I assume that you continued your regular shift</p> <p>14 work -- shift hours during the process when you</p> <p>15 were studying for the battalion chief promotion</p> <p>16 procedure.</p> <p>17 A. Yes, sir.</p> <p>18 Q. Did you take any time off to study?</p> <p>19 A. That I recall, none, sir. If it was any, it</p> <p>20 would have been how our Kelly days fall or</p> <p>21 something like that. But I don't recall taking</p> <p>22 off any significant shift during that process.</p> <p>23 Q. Did you apply for any or request any leave time</p>	<p>1 Q. -- and all that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. So if I needed to request that information, you</p> <p>4 would have that from the beginning of the time</p> <p>5 when you started your business?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Is that a fair statement?</p> <p>8 A. Yes, sir.</p> <p>9 Q. I always get confused with firefighters and</p> <p>10 their shifts. In March of '06, where were you</p> <p>11 assigned?</p> <p>12 A. I was on A shift. Chief Brown was my immediate</p> <p>13 supervisor.</p> <p>14 Q. What station?</p> <p>15 A. Station 3, if I remember correctly.</p> <p>16 Q. And what are the hours or days that A shift</p> <p>17 works in a week?</p> <p>18 A. Well, each shift works a 24-hour shift. So we</p> <p>19 work from 0700 to 07 the following morning for a</p> <p>20 total of 24. Then we're off for 48 hours</p> <p>21 whereas overall we work one day and be off two</p> <p>22 days.</p> <p>23 Q. And you maintained that same shift during the</p>

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1 time that you would have been preparing for the  
 2 test?  
 3 A. Yes, sir.  
 4 Q. Work one day and off two days?  
 5 A. Yes, sir.  
 6 Q. Anything that you did to prepare for the test  
 7 other than review the SOPs, personnel policies,  
 8 and those portions of the study books which you  
 9 thought were going to be important? Anything  
 10 else that you did in preparation for the test?  
 11 A. That's about all I did, sir.  
 12 Q. Did you read completely any of the study aid  
 13 books?  
 14 A. Like I said earlier, Mr. Morgan, I reviewed the  
 15 material that was given to me. In the areas  
 16 where I felt strong on, I didn't spend as much  
 17 time as on the areas that I felt weak on. So it  
 18 was give and take throughout the study guides --  
 19 study information.  
 20 Q. So is it fair to say, then, the answer to my  
 21 question is: You didn't read the whole book.  
 22 You read the parts you thought were going to  
 23 help you with your strengths taking the test?

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1 A. Yes, sir. I concentrated heavily on the area  
 2 where I thought I was weak in.  
 3 Q. What day of the week was the test given? Do you  
 4 recall?  
 5 A. No. I don't recall what day it was, sir.  
 6 Q. And didn't we decide, or at least I decided, it  
 7 was April 10?  
 8 A. Yes, sir. April 10.  
 9 Q. And do you remember what time it started?  
 10 A. It was stated that it started at 8:30, but I  
 11 don't know if it started on time, a little bit  
 12 before or a little bit after. I'm not sure on  
 13 that. I don't recall.  
 14 Q. Was there a sign-in sheet?  
 15 A. Yes, sir, I do recall a sign-in sheet.  
 16 Q. And would you -- I say you. I mean all the  
 17 applicants. Were you given a booklet to take?  
 18 How was the written test? What was the written  
 19 test?  
 20 A. If I'm remembering correctly, through the whole  
 21 process we came in and signed in. And, of  
 22 course, all the tables and chairs were set up  
 23 and spaced evenly from each candidate. And

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1 sometime or another a booklet was presented -- a  
 2 sealed booklet -- that we had to open at the  
 3 time we started the actual test.  
 4 Q. How did you identify -- Did you write in the  
 5 test booklet or was there a separate answer  
 6 sheet?  
 7 A. I don't recall exactly what it was, but I think  
 8 we wrote in the test booklet. But I don't  
 9 recall. I just can't remember.  
 10 Q. Did you put your name on your test booklet or a  
 11 number? How was that to identify --  
 12 A. There was a number, and somewhere you did have  
 13 to put your name.  
 14 Q. And how long was the test?  
 15 A. We was allowed so many hours to take the test.  
 16 If I'm thinking correctly, it was three hours.  
 17 And it took me approximately two, two hours and  
 18 fifteen minutes, two hours and a half to take  
 19 it. I wasn't the last person in the room when I  
 20 left. I'll put it like that. So I didn't take  
 21 up the whole three hours.  
 22 Q. Who was present to monitor or proctor the test?  
 23 Who was there to hand it out and make sure --

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1 A. I think I recall Mr. Lamar being there. I  
 2 vaguely saw Mr. Langley there. I can't remember  
 3 who else may have been there, Mr. Morgan. I'm  
 4 sorry.  
 5 Q. Do you remember if Steve Reeves was there?  
 6 A. I don't remember.  
 7 Q. How about Stephanie?  
 8 A. I don't remember.  
 9 Q. Do you remember any representative from CWH?  
 10 A. I don't recall anybody from CWH.  
 11 Q. From the time of the orientation on February 28  
 12 up until the time you start taking the test on  
 13 April 10, did you have any further conversations  
 14 or participate in any further discussions with  
 15 anybody from CWH about the test?  
 16 A. No.  
 17 Q. During this three-hour test, were you allowed to  
 18 take breaks if you needed to?  
 19 A. I don't remember. All I do remember is I didn't  
 20 take one. I didn't take a break.  
 21 Q. How many questions were there?  
 22 A. I don't remember, sir.  
 23 Q. Was it a multiple choice, fill-in-the-blank?

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1 How were the questions and answers?

2 A. If I remember correctly, it was multiple

3 choice.

4 Q. Were they divided up into any divisions or areas

5 such as supervision, fire scene, or was it just

6 a straight series of questions?

7 A. That I recall, it was a straight series of

8 questions.

9 Q. And did the questions appear to be related to

10 fire work?

11 A. They appeared to be related to the field of fire

12 profession, yes.

13 Q. Were there questions on there that appeared to

14 be related to supervisory roles?

15 A. I recall there being some questions, yes, sir.

16 Q. Did you think that the questions related to what

17 a battalion chief would do in the city of

18 Auburn?

19 MR. HORSLEY: Object to the form. You

20 can answer.

21 A. I don't think -- I think several of the

22 questions on that test had nothing to do with

23 Auburn and the way we do things at Auburn. To

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1 me those questions were something in reference

2 to a larger municipality bigger than us.

3 Q. Do you remember the specific questions?

4 A. No, sir, I don't.

5 Q. How many questions were there like that that you

6 thought related to a larger municipality?

7 A. It was the majority of the questions of the

8 test. I don't recall the exact number or how

9 many apply to that, but I know it was several

10 questions on there that I just didn't think

11 pertained to the way we do things in Auburn, to

12 the rules we go by, regulations.

13 Q. What exactly is your familiarity with the

14 responsibilities and duties of the battalion

15 chief?

16 A. Being that I filled the role in the absence of a

17 battalion chief, I'm very familiar with the

18 things they do.

19 Q. What does a battalion chief do differently from

20 what a lieutenant does?

21 A. Basically in a nutshell, the battalion chief is

22 responsible for the entire shift and also

23 responsible for the operations of the City in

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1 reference to life, safety, and fire protection

2 during that shift.

3 Q. Did you make any complaints to anyone during the

4 testing process --

5 A. No, sir, I did not.

6 Q. -- that you didn't think the test was related to

7 what went on at Auburn?

8 A. No, sir, I did not.

9 Q. After the test was completed, usually folks talk

10 about the test, what they thought about it. Do

11 you remember anybody making any comments in any

12 kind of meetings like that that they thought the

13 test did not address what a battalion chief did

14 at the City of Auburn?

15 A. Nobody spoke to me about anything of the test

16 afterwards, Mr. Morgan, and nor did I speak to

17 anybody about it.

18 Q. How did you think you had done on the test?

19 A. I didn't know what to think to be honest with

20 you, Mr. Morgan.

21 Q. Although you can't remember specific questions,

22 was there some general area of the test that you

23 thought didn't relate to what went on at Auburn

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1 that you could give me some examples so I could

2 kind of understand what you're talking about?

3 A. I can't remember specifically, Mr. Morgan. If I

4 had to guess, it had to be something on the

5 guidelines of --

6 MR. HORSLEY: Don't guess. Just tell

7 him what you remember.

8 A. I don't remember. I just don't remember.

9 Q. Who was the first person to finish the test? Do

10 you remember?

11 A. If I recall, it was Christopher Turner.

12 Mr. Turner.

13 Q. And there were still people in there when you

14 completed it?

15 A. Yes, sir, there was still people in there.

16 (Defendant's Exhibit 10 marked for

17 identification.)

18 Q. Let me show you what I'm marking as Defendant's

19 Exhibit 10. This is a letter to you dated April

20 4, a feedback letter, feedback report. Do you

21 remember receiving that?

22 A. Yes, sir.

23 Q. Did you make a request for this report or did

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1 this report just come to you without you having  
2 requested it?  
3 A. If I recall I requested this.  
4 Q. Did you do that in writing or --  
5 A. I did it in writing.  
6 Q. What did the -- I may have it, but I can't find  
7 it.  
8 In what way did you request it, just that  
9 you would like an opportunity to look at it  
10 or --  
11 A. That I recall, this was done during the  
12 grievance procedure that we initiated, me and  
13 three other guys. Three other guys initiated a  
14 grievance after the results of the test, if I'm  
15 thinking correctly.  
16 MR. HORSLEY: Off the record.  
17 (Brief off-the-record discussion.)  
18 MR. HORSLEY: For the record, this  
19 letter is dated April 4, 2005,  
20 which would appear to be before  
21 the test was given.  
22 MR. MORGAN: Let me take one second.  
23 (Brief recess.)

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1 (Defendant's Exhibit 11 marked for  
2 identification.)  
3 Q. (Continuing by Mr. Morgan) I have a letter,  
4 which I will show you, Defendant's Exhibit  
5 Number 11, and it is an official notification  
6 that you didn't make 70 or whatever the magic  
7 number was on the written test. And then I've  
8 given you Defendant's Exhibit Number 10, which  
9 is the feedback report. Okay?  
10 A. Yes, sir.  
11 Q. And I didn't pick up on it, but as Richard  
12 pointed out, the year is incorrect on the Number  
13 10. It should be 2006.  
14 A. Yes, sir.  
15 Q. My question to you is --  
16 MR. HORSLEY: Just for the record, the  
17 date is wrong, too, because it  
18 predates the test.  
19 MR. MORGAN: What is the date?  
20 MR. HORSLEY: April 4.  
21 MR. MORGAN: The whole date is wrong?  
22 MR. HORSLEY: The whole thing --  
23 THE WITNESS: Everything is improper.

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1 Q. Which did you receive first, 10 or 11?  
2 A. I received 11 first. I did.  
3 Q. And that's dated April --  
4 A. 14th, 2006.  
5 Q. And that's the one telling you that you did  
6 not -- Let me show you one other document.  
7 (Defendant's Exhibit 12 marked for  
8 identification.)  
9 Q. Now, that is a document which appears to be the  
10 grievance complaining about the test, true?  
11 A. Yes, sir.  
12 Q. And it's dated April 21, 2006?  
13 A. Yes, sir.  
14 Q. Using that as a frame of reference, did you  
15 receive the report -- feedback report before or  
16 after you filed the grievance?  
17 A. Now, for starters, Exhibit 11, that's the first  
18 thing I received after the test.  
19 Q. And let me ask you this. Did that come to you  
20 in the mail or was it hand-delivered?  
21 A. I recall it coming in the mail, Mr. Morgan.  
22 Q. All right.  
23 A. And as far as this feedback, the only thing that

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1 I have received, Mr. Morgan, as far as feedback  
2 is when I requested it. That's the only thing I  
3 can recall me receiving, any feedback, because  
4 nothing was made to me directly, but people  
5 complained about the test, one person in  
6 particular, whereas some questions were thrown  
7 out during the testing period.  
8 Q. Who is the one --  
9 A. Joey Darby.  
10 And through the rumor mill, I understand  
11 that's how he managed to make the cut to go  
12 through the remaining of the promotion  
13 procedures.  
14 Q. Because questions were thrown out?  
15 A. That was deemed -- That shouldn't have been  
16 there of some sort. It was presented to  
17 whomever was in power to make that decision.  
18 And I do recall Joey Darby being one of those to  
19 pursue that.  
20 Q. Do you recall there being any others?  
21 A. I don't. I don't recall anyone else.  
22 Q. Well, I'm not saying this is true, but assume  
23 what you said is true, that questions were



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1 thrown out for Joey Darby. Would those	1 A. Yes, sir. If I'm thinking correctly, yes, sir.
2 questions have been thrown out for everybody or	2 Q. And the rumor was that some of the questions
3 just for Joey Darby?	3 that Joey Darby challenged were thrown out. Is
4 A. The whole process.	4 that what the rumor was?
5 Q. That question for everybody was thrown out?	5 A. Yes, sir, if I'm thinking correctly.
6 A. It was removed, null and void, pointblank.	6 Q. And you don't know whether or not the questions
7 Q. So if you missed those same questions that Joey	7 he challenged affected your grade or not. Is
8 Darby missed and that question was thrown out,	8 that a fair statement?
9 then that helped your score?	9 A. I don't know which questions it was that he
10 A. Apparently so. It did.	10 challenged, and therefore I don't know if it
11 Q. Do you recall if you requested that feedback in	11 will help me or hurt me or whatever.
12 writing or just asked somebody verbally to send	12 Q. Is it your understanding that the feedback
13 the feedback report?	13 report was only prepared or presented to the
14 A. As I stated earlier, Mr. Morgan, it was done in	14 four people who signed the grievance as opposed
15 writing. And right here on Exhibit 12, it will	15 to everyone who took the test receiving a
16 show where we asked that four written exams be	16 feedback report?
17 reviewed. And what I received was this	17 A. Like I said earlier, Mr. Morgan, I didn't
18 feedback.	18 receive -- the first thing I received was the
19 Q. So you're thinking that your written request for	19 letter that I received showing my score. After
20 that was in Exhibit 12, the grievance thing?	20 that me and the other guys filed a grievance,
21 A. Yes, sir.	21 and then after that I received the feedback
22 Q. So when that grievance is filed -- My	22 report based on the request that I made.
23 understanding is Exhibit 12 is the first step in	23 Q. That's what my question is. Is it your
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1 the grievance procedure.	1 understanding that you received the feedback
2 A. It appears that this is, yes, sir.	2 report because you requested it when you filed
3 Q. You, of course, had been informed that you did	3 for the grievance?
4 not pass by that time?	4 A. Yes.
5 A. Yes, sir. The first thing I received was my	5 Q. Do you have an understanding as to whether, for
6 letter of response saying what I made on the	6 instance, Rodney Hartsfield received a feedback
7 test. That's the first thing I received.	7 report? Do you know one way or the other
8 Q. And is it your testimony that when you filed	8 whether he did?
9 that grievance that you had heard rumors that	9 A. I don't know if he did or not, sir.
10 Joey Darby had test questions thrown out?	10 Q. The only thing you can say that you think is
11 A. Well, Joey Darby didn't have them thrown out.	11 that because you complained and requested it,
12 He questioned those -- I guess he pursued those	12 you received it, and you don't know whether
13 questions because we was -- they mentioned	13 other people received it as a matter of course
14 somewhere -- I'm trying to remember -- if a	14 or not?
15 question was on the test that didn't appear to	15 A. Just like right here on Exhibit 10, this was
16 be in reference to -- I can't remember how they	16 addressed to me, and I know what I asked for.
17 worded it, but I know there was some questions	17 Q. Have you ever discussed it with Joey Darby about
18 on that test challenged.	18 test questions being thrown out or what he
19 Q. Well, did you challenge any test -- any --	19 objected to or anything?
20 A. Any questions? No, sir, I didn't.	20 A. No, sir, I didn't.
21 Q. But from what I understand your testimony to be,	21 Q. Have you heard of any other applicants that
22 the rumor was that Joey Darby challenged some	22 complained about the test questions other than
23 questions?	23 Joey Darby?

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1 A. Like I say, it was just word of mouth, rumor  
2 mill, and I'm not sure on that. I don't recall.  
3 Q. The only name you recall is Joey Darby?  
4 A. That's the only name I recall hearing in  
5 reference to.  
6 Q. What's the date of the letter that told you you  
7 didn't -- April 14?  
8 A. Uh-huh (positive response).  
9 Q. And the grievance was filed April 21.  
10 In between receiving the letter, Defendant's  
11 Exhibit Number 11, telling you that you were  
12 not -- hadn't made high enough on the written  
13 and filing this grievance, Defendant's Exhibit  
14 12 on April 21, did you have any conversations  
15 with Lee Lamar or Larry Langley about the test?  
16 A. I didn't, sir.  
17 Q. Did you have any conversations with Steve Reeves  
18 or Bill James?  
19 A. No, sir, I did not.  
20 Q. Have any conversations with the mayor or the  
21 city manager about it?  
22 A. No, sir, I did not.  
23 Q. How about WCH? Did you have any conversations

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1 with CWH?  
2 A. No, sir, I did not.  
3 Q. And then you and three others filed a grievance  
4 to Lee Lamar, and you asked that four written  
5 exams be reviewed. I assume that's the four of  
6 you, your written exams?  
7 A. Yes, sir.  
8 Q. Now, Horace Clanton is a white male?  
9 A. Yes, sir.  
10 Q. And Robbie Hodge is a white male?  
11 A. Yes, sir.  
12 Q. Eddie Ogletree is a black male?  
13 A. Yes, sir.  
14 Q. And Gerald Stephens is a black male?  
15 A. Yes, sir.  
16 Q. And the four of y'all filed this grievance  
17 together?  
18 A. We initiated that grievance together.  
19 Q. And when you actually had the hearing, though,  
20 how many of you went forward with the hearing?  
21 A. It was three of us.  
22 Q. Who did not go forward?  
23 A. Robbie Hodge.

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1 Q. In this letter y'all say about exercising your  
2 rights for a grievance on a promotion procedure,  
3 which includes the following: The written exam.  
4 What was your complaint about the written  
5 exam at that point?  
6 A. In reference to this grievance as a group,  
7 everybody had their specific complaint. And the  
8 only thing I can tell you about that is the last  
9 one, inconsistency of past promotional  
10 procedures. That was my main complaint.  
11 Q. So did you have a complaint yourself about the  
12 written exam as part of this grievance  
13 procedure?  
14 MR. HORSLEY: What was that question  
15 again? I'm sorry.  
16 MR. MORGAN: He said --  
17 Q. As I understand what you said, the four of y'all  
18 may have each had your own separate complaints,  
19 true?  
20 A. Pretty much so, yes, sir.  
21 Q. The one that you were most complaining about was  
22 the inconsistency of past promotional  
23 procedures?

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1 A. Yes, sir.  
2 Q. My question is: As part of the grievance  
3 procedure, was one of your complaints or did you  
4 have a complaint about the written exam?  
5 A. The thing about inconsistency of past  
6 promotional procedures, it involves the written  
7 exam because for the simple fact there have  
8 never been one. That's my main thing. That's  
9 part of my inconsistency, because when I took --  
10 if I can explain --  
11 MR. HORSLEY: Yeah.  
12 A. When I took my promotional assessment in '96,  
13 there was no written test. Anything after that  
14 that I recall within a ten-year time span, there  
15 was no written test.  
16 Q. Let me ask the question this way. I'm going to  
17 get to the inconsistency and let you explain  
18 that in detail, but I want to go through these  
19 other three.  
20 What I'm hearing you say -- you tell me if  
21 I'm wrong -- is that your complaint about the  
22 written exam is that it was a requirement.  
23 A. Basically the written exam was part of the

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<p>1 procedure, yes.</p> <p>2 Q. You didn't make any specific complaints about</p> <p>3 the exam per se but just the fact that it was</p> <p>4 now a part of the promotion procedure?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And did you have as part of your complaint the</p> <p>7 no time in grade policy? Was that something</p> <p>8 that concerned you?</p> <p>9 A. Not directly, sir.</p> <p>10 Q. And then the -- I don't even understand this</p> <p>11 one -- no accumulative point system, was that</p> <p>12 one of your concerns?</p> <p>13 A. That was a minor concern because --</p> <p>14 Q. What is that?</p> <p>15 A. Basically accumulative points is something</p> <p>16 that's implemented into the overall assessment</p> <p>17 whereas if --</p> <p>18 Q. Back up.</p> <p>19 A. Let's say, for example, if you had four years of</p> <p>20 service, you get two points for that. If you</p> <p>21 had a degree, you get eight points for that, you</p> <p>22 know. To the point -- The point I'm trying to</p> <p>23 get at is: At the end of the testing, all your</p>	<p>1 you -- was the inconsistency of past promotional</p> <p>2 procedures.</p> <p>3 A. Yes, sir.</p> <p>4 Q. Elaborate and tell me exactly what it is that</p> <p>5 concerned you about that one.</p> <p>6 A. The thing that concerned me was that, of course,</p> <p>7 I went through an assessment center. Some</p> <p>8 people promoted and, whether it was lieutenant</p> <p>9 or team leader, went through structured</p> <p>10 interviews. Some people was appointed. And</p> <p>11 some people were just, in my terms, vaguely</p> <p>12 given a job.</p> <p>13 Q. Just what, now?</p> <p>14 A. Vaguely given the job and told them that you are</p> <p>15 in this position. And when I say that, the job</p> <p>16 position wasn't posted.</p> <p>17 Q. So --</p> <p>18 A. So that's what I mean by inconsistency.</p> <p>19 Q. I guess what I'm understanding you to say -- and</p> <p>20 once again, you correct me -- is that people had</p> <p>21 achieved a rank in different ways.</p> <p>22 A. Yes, sir.</p> <p>23 Q. Who was appointed as opposed to going through</p>
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<p>1 points are added up, and that's how you get a</p> <p>2 result, like I got on my result from when I was</p> <p>3 promoted stating how I ranked and here was my</p> <p>4 score.</p> <p>5 Q. So you thought there should be some accumulative</p> <p>6 point system into the system, either seniority</p> <p>7 or education or something?</p> <p>8 A. Yes, sir. I think it should have been one --</p> <p>9 some type of point system, yes, sir. Whether</p> <p>10 there was or not, I don't know, because I didn't</p> <p>11 make it past the written test portion for</p> <p>12 battalion chief.</p> <p>13 Q. Well, tell me how you would have fashioned the</p> <p>14 test for battalion chief.</p> <p>15 MR. HORSLEY: Object to the form. You</p> <p>16 can answer.</p> <p>17 A. I'm not an expert on test making, Mr. Morgan, so</p> <p>18 I can't really say what I would do and what I</p> <p>19 would do would be the correct thing to do. But</p> <p>20 I just -- I just -- I'm not an expert in that</p> <p>21 field. I just don't know.</p> <p>22 Q. And then your number four complaint -- I think</p> <p>23 this is the one that you said most concerned</p>	<p>1 the structured interview with the team leader or</p> <p>2 the assessment as lieutenant? Who was appointed</p> <p>3 to a position that sat for the battalion chief</p> <p>4 promotion?</p> <p>5 A. I do recall Rodney Hartsfield, who is a</p> <p>6 battalion chief now, being promoted when he was</p> <p>7 on probation as a career firefighter. I don't</p> <p>8 have any specifics on the date or nothing like</p> <p>9 that.</p> <p>10 Q. Promoted to what?</p> <p>11 A. He was promoted to a team leader.</p> <p>12 Q. While he was a probationary career firefighter?</p> <p>13 A. Yes.</p> <p>14 Q. Well, I don't know either. I mean, the</p> <p>15 documents will say whatever they say, but was</p> <p>16 there always -- other than Rodney Hartsfield's</p> <p>17 promotion, was there always a requirement for</p> <p>18 promotion to team leader that you had to be a</p> <p>19 non-probationary career firefighter?</p> <p>20 A. Like I say, Mr. Morgan, I was not a team leader,</p> <p>21 but I know there was requirements for me when I</p> <p>22 applied for lieutenant.</p> <p>23 Q. So you don't know whether or not the</p>



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<p>1 non-probationary versus probationary was ever a</p> <p>2 requirement for team leader?</p> <p>3 A. Well, I mean, it was practiced, but whether or</p> <p>4 not it was a direct requirement, I can't tell</p> <p>5 you. Like I say, I was never a team leader.</p> <p>6 Q. And then the last category was people who were</p> <p>7 vaguely given the jobs that were not posted.</p> <p>8 Who sat for the battalion chief position that</p> <p>9 was vaguely given a job that was not posted?</p> <p>10 A. Well, nobody sat for the position of battalion</p> <p>11 chief. Basically he had something to do with</p> <p>12 presenting in the -- the testing orientation or</p> <p>13 whatever. And what I'm speaking about in</p> <p>14 particular is that when they first implemented</p> <p>15 back the training officer position, it was never</p> <p>16 posted. I never saw anything in reference to.</p> <p>17 And the first time I heard about it was when my</p> <p>18 immediate supervisor told me, who is the late</p> <p>19 Jimmy Brown. He told me that the person who had</p> <p>20 stepped in and started acting as the training</p> <p>21 officer was the training officer.</p> <p>22 Q. Lee Lamar?</p> <p>23 A. Yes, sir.</p>	<p>1 Q. Do you remember what year he was promoted to</p> <p>2 captain?</p> <p>3 A. I don't remember off the top of my head,</p> <p>4 Mr. Morgan.</p> <p>5 Q. But your best recollection is it was sometime</p> <p>6 before '96?</p> <p>7 A. It was before '96.</p> <p>8 Q. All right. Now, you're going to have to help me</p> <p>9 here. You've taken your written test. You've</p> <p>10 told me about the procedure, what went on during</p> <p>11 that written test. And then I guess a couple of</p> <p>12 days later -- within a week I guess -- you get</p> <p>13 notice that you didn't score high enough to</p> <p>14 proceed. And then by April 21 you filed your</p> <p>15 grievance along with these other firefighters.</p> <p>16 I guess they were all lieutenants at that point.</p> <p>17 A. Yes, sir. We were all lieutenants.</p> <p>18 Q. And then you go through the grievance</p> <p>19 procedure. I've seen the paperwork where you go</p> <p>20 up -- the four of you go up the steps on the</p> <p>21 grievance procedure.</p> <p>22 A. Yes, sir.</p> <p>23 Q. Is there anything else going on at that time in</p>
Page 143	Page 145
<p>1 Q. Anybody else who you think in the fire</p> <p>2 department received a promotion where they were</p> <p>3 vaguely given a job that was not posted other</p> <p>4 than Lee Lamar?</p> <p>5 A. Well, vaguely given a job, I don't know, but I</p> <p>6 recall another incidence where a promotion took</p> <p>7 place. They went from firefighter to captain</p> <p>8 whereas they skipped other rank.</p> <p>9 Q. And that's Larry Langley?</p> <p>10 A. And that's Larry Langley.</p> <p>11 Q. Once again, do you know whether or not on that</p> <p>12 promotion there was a requirement for a time in</p> <p>13 grade or that you had to be a lieutenant?</p> <p>14 A. The only thing I know is what I applied for,</p> <p>15 Mr. Morgan, and that was lieutenant.</p> <p>16 Q. And that would have been the captain promotion</p> <p>17 that occurred in 1996, true?</p> <p>18 A. No, sir. It was in -- In 1996 I think</p> <p>19 Mr. Langley was on his way to being acting fire</p> <p>20 chief.</p> <p>21 Q. So Langley was promoted to captain even before</p> <p>22 '96?</p> <p>23 A. Yes, sir.</p>	<p>1 terms of complaints about the test,</p> <p>2 conversations with people, anything that's not</p> <p>3 documented in the grievance procedures?</p> <p>4 A. I don't recall of anything. I will say that I</p> <p>5 did converse with the guys that was on the</p> <p>6 grievance. Once we came together and decided to</p> <p>7 file a grievance, we discussed a lot of things.</p> <p>8 And it was with those guys that are on that</p> <p>9 paper right there.</p> <p>10 Q. What do you recall Horace Clanton's specific</p> <p>11 complaints being about the test or the</p> <p>12 procedure?</p> <p>13 A. Can I see that?</p> <p>14 Q. Yeah, sure.</p> <p>15 A. I can't remember, Mr. Morgan. I'm sorry. The</p> <p>16 only thing that I can consider to be my direct</p> <p>17 complaint was the inconsistency part in</p> <p>18 compliance (sic) with everything else. I mean,</p> <p>19 it was all of us conversing together. And we</p> <p>20 had our concerns, and all of it came together</p> <p>21 and we presented this together.</p> <p>22 Q. I just want to be sure I have this documented.</p> <p>23 Do you remember -- what was the other -- Not</p>

Deposition of Gerald Stephens

May 30, 2008

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<p>1 Eddie, but who was the other one?</p> <p>2 A. Mr. Robert Hodge.</p> <p>3 Q. Do you remember any specific complaints that he</p> <p>4 had?</p> <p>5 A. No, sir, I don't. I don't recall.</p> <p>6 Q. Do you remember any specific complaints that</p> <p>7 Eddie Ogletree had?</p> <p>8 A. Of the three that's available, no, sir. I don't</p> <p>9 recall.</p> <p>10 Q. I think this is Exhibit 10, the feedback</p> <p>11 report. When is your recollection that you</p> <p>12 received that, after you filed the grievance?</p> <p>13 A. Like I say, the only time I recall receiving</p> <p>14 this that is addressed to me is when I pretty</p> <p>15 much asked for a review. In reference to</p> <p>16 everybody else, I don't know. I'm just speaking</p> <p>17 as far as what I received that was addressed to</p> <p>18 me, because I think of the three of us -- of the</p> <p>19 four of us who did it, each one was addressed to</p> <p>20 each individual, I think. But I'm not clear on</p> <p>21 it. It's been so far along. But I can vouch</p> <p>22 for this one that's addressed to me.</p> <p>23 Q. Look at the second page of this document, and</p>	<p>1 Q. And then the second paragraph says: There were</p> <p>2 a total of seven items appealed, and the scoring</p> <p>3 key was adjusted for two of these items.</p> <p>4 Did you ever ask anyone at the City what</p> <p>5 that referred to or what that meant?</p> <p>6 A. I didn't, sir. No.</p> <p>7 Q. And so I can be clear, the rumor is that if test</p> <p>8 grades or scores had not been changed -- Let me</p> <p>9 start over.</p> <p>10 The rumor is if test question answers had</p> <p>11 not been changed that Joey Darby would not have</p> <p>12 scored high enough to have proceeded to the</p> <p>13 assessment part?</p> <p>14 A. Yes, sir.</p> <p>15 Q. But you don't know how that change affected your</p> <p>16 individual score, do you?</p> <p>17 A. Not directly, sir, no.</p> <p>18 Q. Tell me just generally what went on during the</p> <p>19 grievance appeal process.</p> <p>20 A. Basically what happened was after -- I was</p> <p>21 notified after the time I received the letter</p> <p>22 stating what I made on the test and I couldn't</p> <p>23 proceed. I was contacted by Mr. Clanton. He</p>
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<p>1 it's got down there reading source.</p> <p>2 A. Okay.</p> <p>3 Q. It's got four books -- I assume they are</p> <p>4 books -- listed: IFSTA Chief Officer, Effective</p> <p>5 Supervisory Practices, Fire Officers' Handbook</p> <p>6 of Tactics, and Structural Firefighting.</p> <p>7 Do you see those?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Are those the four books that the City furnished</p> <p>10 you to review to prepare for the battalion chief</p> <p>11 exam?</p> <p>12 A. I think they are, sir.</p> <p>13 Q. And look at the next page on that. It says:</p> <p>14 Scoring Changes Based on Item Analysis. Do you</p> <p>15 see that?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And it's got -- The first sentence says: At the</p> <p>18 time of the written test, all candidates were</p> <p>19 given the opportunity to appeal any item on the</p> <p>20 test they felt was inaccurate and unfair.</p> <p>21 And my understanding is that you did not</p> <p>22 appeal any of the test questions, true?</p> <p>23 A. No, sir, I didn't appeal any.</p>	<p>1 asked me what I thought, and I told him that I'm</p> <p>2 concerned enough to file a grievance; what about</p> <p>3 you. And he say he felt the same way, and he</p> <p>4 had talked to Mr. Hodge and Mr. Ogletree.</p> <p>5 So we met and we initiated the first letter</p> <p>6 based upon the conversations we had and based on</p> <p>7 everything that we presented on this first</p> <p>8 letter. And we decided to present it to --</p> <p>9 Being that we was a station officer and middle</p> <p>10 management, we decided to present it to</p> <p>11 Mr. Lamar, who was deputy chief, because we each</p> <p>12 worked on -- well, some of us worked on</p> <p>13 different shifts. If I'm not mistaken, me and</p> <p>14 Mr. Clanton was on the same shift, and Eddie</p> <p>15 and -- Mr. Hodge and Mr. Ogletree was on the</p> <p>16 same shift. So we had different supervisor --</p> <p>17 immediate supervisors. So we addressed it to</p> <p>18 Mr. Lamar.</p> <p>19 Q. And I guess from there it goes to --</p> <p>20 A. Yes, sir. Just procedures that go through the</p> <p>21 chain of command.</p> <p>22 Q. And eventually you have a hearing?</p> <p>23 A. Yes, sir. When we reach the city manager, it's</p>

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<p>1 his decision to grant us a hearing of his</p> <p>2 choice, you know, as far as the hearing</p> <p>3 officer. And it's set up, and that's when we go</p> <p>4 into the hearing procedure part of the</p> <p>5 grievance.</p> <p>6 Q. And that was before Judge Bailey came in?</p> <p>7 A. No. That was when Judge Bailey came. He was</p> <p>8 the hearing officer.</p> <p>9 Q. He was the hearing officer. That's what I</p> <p>10 asked. Okay.</p> <p>11 And Hodge decided not to go forward with the</p> <p>12 hearing?</p> <p>13 A. Yes, sir. During the process of when we</p> <p>14 addressed Chief Lamar and, if I'm remember</p> <p>15 correctly, when addressed -- when we was</p> <p>16 preparing to address Mr. James, public safety</p> <p>17 director, he told myself and Mr. Clanton that he</p> <p>18 did not want to pursue any further. And, of</p> <p>19 course, we respected that and told him we</p> <p>20 appreciated what he had done. And Mr. Clanton</p> <p>21 and myself and Mr. Ogletree, we're still</p> <p>22 proceeding.</p> <p>23 Q. Clanton, is that the officer that had been the</p>	<p>1 hearing?</p> <p>2 A. No, sir. Well, let's back up. Which one, the</p> <p>3 one in 2005 or 2006?</p> <p>4 Q. The one dealing with the battalion chief.</p> <p>5 A. Me, Mr. Ogletree, and Mr. Clanton? No, sir, we</p> <p>6 didn't have a lawyer at that time.</p> <p>7 Q. Was there an attorney on the other side for the</p> <p>8 City or was it just --</p> <p>9 A. No, sir. We just came into the hearing as we</p> <p>10 were.</p> <p>11 Q. Who was the City's spokesperson?</p> <p>12 A. The City spokesperson?</p> <p>13 Q. Who was the one that defended the City's</p> <p>14 position?</p> <p>15 A. Basically Judge Bailey. I mean, that's who we</p> <p>16 talked to.</p> <p>17 Q. Lee Lamar wasn't there?</p> <p>18 A. Mr. Lamar was there and Mr. Reeves was there,</p> <p>19 but, you know, we -- our conversation pretty</p> <p>20 much was through Mr. Bailey.</p> <p>21 Q. Well, I understand that. Was there somebody</p> <p>22 from the City who then had a conversation with</p> <p>23 Mr. Bailey as to what the City's position was?</p>
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<p>1 subject of your earlier EEOC complaint --</p> <p>2 A. Yes, sir.</p> <p>3 Q. -- that he took a temporary position as</p> <p>4 something?</p> <p>5 A. Yes, sir. He was appointed as acting A shift</p> <p>6 officer in place of the late Chief Brown.</p> <p>7 That's when he had undergone -- initially found</p> <p>8 out and undergone his health issues at the time</p> <p>9 and was not capable of work. So our shift was</p> <p>10 without an immediate supervisor when this</p> <p>11 happened, but I was the acting. I was filling</p> <p>12 that role prior to him being appointed because I</p> <p>13 was the one who broke the news to every other</p> <p>14 officer on the shift, the situation with Chief</p> <p>15 Brown.</p> <p>16 Q. But my question is: That's the person you were</p> <p>17 complaining about that got to be the temporary,</p> <p>18 I guess, captain or battalion chief and you</p> <p>19 thought it should have been you?</p> <p>20 A. Yes, sir. That was my main complaint to</p> <p>21 Mr. Langley who made the appointment: Why</p> <p>22 Mr. Clanton when I wasn't given an opportunity.</p> <p>23 Q. Did you have an attorney representing you at the</p>	<p>1 A. I guess there was between those other people</p> <p>2 that were present, yes, sir.</p> <p>3 Q. Anybody you remember being there besides Lee and</p> <p>4 Steve Reeves?</p> <p>5 A. I can't remember if Mr. Langley was there or</p> <p>6 not, but I do know Mr. Lamar and Mr. Reeves was</p> <p>7 there.</p> <p>8 Q. And Judge Bailey --</p> <p>9 A. And Judge Bailey, of course. He was the hearing</p> <p>10 officer.</p> <p>11 Q. He ruled against y'all?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Did you have any witnesses or was it just the</p> <p>14 three of you?</p> <p>15 A. It was just us three.</p> <p>16 Q. Do you know Rodney Hartsfield?</p> <p>17 A. I do.</p> <p>18 Q. Have you ever worked with him?</p> <p>19 A. I do.</p> <p>20 Q. Is he --</p> <p>21 A. I have.</p> <p>22 Q. Is he a good officer?</p> <p>23 A. I can't say if he's good or not, but the times I</p>

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<p>1 worked with Rodney Hartsfield, he was an</p> <p>2 insubordinate (sic) to me. I mean, he worked</p> <p>3 under my leadership.</p> <p>4 Q. He wasn't insubordinate. He was subordinate.</p> <p>5 A. He was subordinate, yes, sir. He was either a</p> <p>6 student firefighter, career firefighter, or a</p> <p>7 team leader. As far as him being a battalion</p> <p>8 chief, I don't recall working for him ever since</p> <p>9 he's been in that position. I may have worked</p> <p>10 overtime a couple of hours till they can get</p> <p>11 somebody in at shift change, but not a 24-hour</p> <p>12 shift. No, sir.</p> <p>13 Q. Do you have an opinion as to whether or not he</p> <p>14 is qualified or not qualified to be a battalion</p> <p>15 chief?</p> <p>16 MR. HORSLEY: Object to the form. You</p> <p>17 can answer.</p> <p>18 A. I don't have an opinion on that, Mr. Morgan.</p> <p>19 Q. And Joe Lovvorn, have you worked with him?</p> <p>20 A. Yes, sir. Same as I have with Rodney</p> <p>21 Hartsfield.</p> <p>22 Q. Was he a good, competent officer when you worked</p> <p>23 with him?</p>	<p>1 or not, but I do know I had some problems with</p> <p>2 him in reference to the grievance that I</p> <p>3 initiated. And that goes back to when I was at</p> <p>4 Station 5.</p> <p>5 Q. You told me about that grievance?</p> <p>6 A. Yes, sir.</p> <p>7 Q. I don't know that he's one of the people that</p> <p>8 y'all referred to, but I think Joey Darby has</p> <p>9 been promoted to battalion chief as well now.</p> <p>10 A. Joey Darby was promoted to battalion chief to</p> <p>11 replace Chief Brown when he retired.</p> <p>12 Q. Do you have an opinion of whether or not Joey</p> <p>13 Darby is qualified or not qualified to be a</p> <p>14 battalion chief?</p> <p>15 MR. HORSLEY: Object to the form. You</p> <p>16 can answer.</p> <p>17 A. I don't have an opinion on that, sir.</p> <p>18 Q. Do you have an opinion on whether or not you are</p> <p>19 more qualified than Rodney Hartsfield to be a</p> <p>20 battalion chief?</p> <p>21 MR. HORSLEY: Object to the form. You</p> <p>22 can answer.</p> <p>23 A. I do have an opinion on that.</p>
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<p>1 A. I mean --</p> <p>2 Q. Have any complaints about him?</p> <p>3 A. I never worked under his leadership as a</p> <p>4 battalion chief. It was always the same</p> <p>5 description as was for Rodney Hartsfield.</p> <p>6 Q. Do you have any opinion as to whether he is or</p> <p>7 is not qualified to be a battalion chief?</p> <p>8 MR. HORSLEY: Object to the form.</p> <p>9 A. I don't have an opinion, sir.</p> <p>10 Q. And Matt Jordan --</p> <p>11 A. Yes, sir.</p> <p>12 MR. HORSLEY: Same objection.</p> <p>13 Q. Have you ever worked for Matt Jordan?</p> <p>14 MR. HORSLEY: I'm sorry. I thought he</p> <p>15 was asking the same question.</p> <p>16 A. I have worked for Chief Jordan. He was -- When</p> <p>17 he was promoted, he was my -- he was put on my</p> <p>18 shift, or our shift, as my immediate supervisor.</p> <p>19 Q. And do you have an opinion on whether or not he</p> <p>20 is or is not qualified to be a battalion chief?</p> <p>21 MR. HORSLEY: Object to the form. You</p> <p>22 can answer.</p> <p>23 A. I don't have an opinion whether he's qualified</p>	<p>1 Q. What is that opinion?</p> <p>2 A. Considering that I was an officer when he</p> <p>3 started working there, I taught him in rookie</p> <p>4 school, and, I mean, I trained him through the</p> <p>5 training procedures that took place or</p> <p>6 whatever. All these guys who are battalion</p> <p>7 chiefs now, they came in after me.</p> <p>8 Q. I want to be sure I get all your answers so</p> <p>9 let's kind of take our time on this.</p> <p>10 A. Yes, sir.</p> <p>11 Q. What I'm understanding you to say about Rodney</p> <p>12 Hartsfield as to why you think you're more</p> <p>13 qualified is that you were an officer when he</p> <p>14 was hired and you participated in his training,</p> <p>15 right?</p> <p>16 A. (Witness nods head positively.)</p> <p>17 Q. Any other reasons why you think you're more</p> <p>18 qualified than Rodney Hartsfield?</p> <p>19 MR. HORSLEY: Object to the form.</p> <p>20 A. More years of experience level. I have more</p> <p>21 years of experience. Spent more time on the</p> <p>22 job. Has played a significant role or did play</p> <p>23 a significant role in the growth of the</p>

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1 department, you know, during the era when they  
 2 was actually coming in and being hired. I just  
 3 think I have more experience than any of those  
 4 guys at the Auburn Fire Division.  
 5 And one other thing: I mentioned it later  
 6 on. During their absence, you know, I filled  
 7 that position. And I filled that position  
 8 before they even became, you know, battalion  
 9 chiefs. I filled the position in the absence of  
 10 a battalion chief.  
 11 Q. If a battalion chief --  
 12 A. And I still do it.  
 13 Q. -- is not there, you as a lieutenant, step up --  
 14 A. Yes, sir.  
 15 Q. -- to that position?  
 16 A. Yes, sir. Based upon seniority.  
 17 MR. HORSLEY: And you said you had  
 18 done that before the battalion  
 19 chief promotion?  
 20 THE WITNESS: Before and after.  
 21 Q. You're talking about with other people who were  
 22 battalion chiefs?  
 23 A. Yes, sir. I've filled in several times for

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1 Chief Brown.  
 2 Q. Do you know whether or not Rodney Hartsfield  
 3 ever filled in --  
 4 A. I don't know. Me and him was not on the same  
 5 shift.  
 6 Q. Do you know whether or not as a team leader  
 7 Rodney Hartsfield had stepped up and filled in  
 8 as a lieutenant?  
 9 A. I'm not sure on that, Mr. Morgan.  
 10 Q. Have we covered everything about Rodney  
 11 Hartsfield as to why you think you're more  
 12 qualified?  
 13 A. I think we touched the basis of it, sir, the  
 14 most important part.  
 15 Q. And Joe Lovvorn, do you think you're more  
 16 qualified than Joe Lovvorn to be a battalion  
 17 chief?  
 18 MR. HORSLEY: Object to the form.  
 19 Q. What are the reasons?  
 20 A. Pretty much the same reasons that I mentioned  
 21 with Rodney Hartsfield.  
 22 Q. Been there longer?  
 23 A. Yes, sir.

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1 Q. And Matt Jordan. Do you think you're more  
 2 qualified than Matt Jordan?  
 3 MR. HORSLEY: Object to the form.  
 4 Q. What are the reasons?  
 5 A. Same reasons. Understand, Mr. Morgan, all these  
 6 guys came in right along the same era, one or  
 7 two years, give or take. And when they came in,  
 8 I was a officer already.  
 9 Q. And then Joey Darby. You think you're more  
 10 qualified than Joey Darby --  
 11 A. Yes, sir.  
 12 Q. -- to be a battalion chief?  
 13 MR. HORSLEY: Object to the form.  
 14 A. Yes, sir.  
 15 Q. Same reasons?  
 16 A. Yes, sir.  
 17 Q. Any different reasons for any of them other than  
 18 what you've already expressed?  
 19 A. Not at this time, sir.  
 20 Q. There's a reference in this lawsuit -- Well, let  
 21 me get to that.  
 22 MR. MORGAN: Let's take a quick break.  
 23 (Brief recess.)

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1 Q. (Continuing by Mr. Morgan) Look at these four  
 2 books that were the reading source.  
 3 Specifically I'm going to ask you about all of  
 4 them, but specifically the supervisory --  
 5 Effective Supervisory Practices. Hadn't you  
 6 read that book earlier in some of your training  
 7 courses for some of the certifications that you  
 8 had received along the way in your career?  
 9 A. Yes, sir. I recall having a lot to do  
 10 resourcefully with this particular text, yes,  
 11 sir.  
 12 Q. How about the other three texts on there? Had  
 13 you read or been exposed to any of them before  
 14 the battalion chief promotion procedure?  
 15 A. If it was any other, it had to be Structural  
 16 Firefighting. That's throughout your whole  
 17 career pretty much.  
 18 Q. So a lot of this -- at least the material in  
 19 those two books would not have been new material  
 20 to you but really have been a review of stuff  
 21 that you had learned along the way?  
 22 A. Yes, sir. I can agree with that.  
 23 Q. Let me ask some specifics about your complaint.



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<p>1 In Count I --</p> <p>2 (Brief pause.)</p> <p>3 Q. Look at paragraph 15, if you would, first</p> <p>4 sentence. It says: Prior to February 2007,</p> <p>5 only nine probationary lieutenants were allowed</p> <p>6 to apply for the position of battalion chief.</p> <p>7 Actually, isn't it true that there actually</p> <p>8 had never been a promotion for battalion chief</p> <p>9 before this? Isn't that true?</p> <p>10 A. No.</p> <p>11 MR. HORSLEY: And, for the record,</p> <p>12 that date is wrong too. It should</p> <p>13 be 2006. I'm sorry about that.</p> <p>14 That was my fault.</p> <p>15 A. The first incident involving battalion chiefs</p> <p>16 was a change from captain to battalion chief.</p> <p>17 That was the title change coordinated and worked</p> <p>18 through the person in position to make that</p> <p>19 decision.</p> <p>20 Q. So this is actually the first promotion to</p> <p>21 battalion chief?</p> <p>22 A. Yes, sir.</p> <p>23 Q. The prior promotion had been to captain in '96?</p>	<p>1 Q. And was promoted?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And then you've got in February of '06, the City</p> <p>4 changed its policy to allow non-probationary and</p> <p>5 probationary firefighters to apply for battalion</p> <p>6 chief.</p> <p>7 And I think cutting through all that, what</p> <p>8 we've established is the only person who was not</p> <p>9 a team leader, lieutenant, or lieutenant (sic)</p> <p>10 who sat for the written test for battalion chief</p> <p>11 was Chris Turner, a black male?</p> <p>12 A. Chris Turner. Give or take Clay Carson.</p> <p>13 Q. And I think you said he didn't take the test.</p> <p>14 A. No, sir, he did not.</p> <p>15 Q. The only one that took the test was Chris?</p> <p>16 A. Yes, sir. Mr. Turner.</p> <p>17 Q. Black male. All right.</p> <p>18 Look at number 16, the next page. It says:</p> <p>19 During the time the City changed the policy to</p> <p>20 require applicants for battalion chief to pass a</p> <p>21 written test.</p> <p>22 Obviously there was a written test. What's</p> <p>23 the problem with the written test?</p>
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<p>1 A. Yes, sir.</p> <p>2 Q. And I think you testified, but I want to be</p> <p>3 clear. You don't remember whether or not</p> <p>4 non-probationary people were allowed to apply</p> <p>5 for captain in '96 because you weren't concerned</p> <p>6 with that. You were concerned with your own</p> <p>7 promotion procedure.</p> <p>8 A. Yes, sir. For the record, there were two people</p> <p>9 applying for captain in '96 when I was applying</p> <p>10 for lieutenant, and it was Mr. Lamar and</p> <p>11 Mr. Johnny Lawrence. Those were the two</p> <p>12 candidates for captains in 1996.</p> <p>13 Q. And were either of them promoted?</p> <p>14 A. Chief Lawrence -- Mr. Lawrence was promoted to</p> <p>15 captain.</p> <p>16 Q. Had he been a lieutenant?</p> <p>17 A. He was a team leader.</p> <p>18 Q. So then prior to February 2006, this is not</p> <p>19 correct. Only non-probationary -- Unless you're</p> <p>20 counting team leaders as being lieutenants in</p> <p>21 '96. As a team leader, he was allowed to apply</p> <p>22 for promotion to captain?</p> <p>23 A. Yes, sir, he was.</p>	<p>1 MR. HORSLEY: Object to the form. Go</p> <p>2 ahead.</p> <p>3 A. My problem with that is that there have never</p> <p>4 been a written test, Mr. Morgan. It was</p> <p>5 always -- It was either assessment center or a</p> <p>6 structured interview. And regardless which one</p> <p>7 it was, there was not a written test for a</p> <p>8 promotion to that rank.</p> <p>9 Q. Well, say that's true. Say that's true. Why</p> <p>10 does that make it wrong to change the procedure</p> <p>11 to include a written test?</p> <p>12 MR. HORSLEY: Object to the form.</p> <p>13 Q. I know you don't like the fact that you didn't</p> <p>14 do well on the written test. But aside from</p> <p>15 that, looking at the big picture, what's wrong</p> <p>16 with the City including a written test as part</p> <p>17 of the promotion procedure?</p> <p>18 MR. HORSLEY: Object to the form. Go</p> <p>19 ahead.</p> <p>20 A. I'm not in the position to say whether it's</p> <p>21 right or wrong with the City implementing</p> <p>22 anything. I can only speak from the point that</p> <p>23 through my 17 years of being there or up to the</p>



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1 point where I became an officer and on up until  
 2 the time of this first battalion chief  
 3 promotion, there was never a written test. What  
 4 is right or wrong for the City to do, I'm not at  
 5 any liberty or at any power to justify that.  
 6 Q. And that makes me want to back up a minute.  
 7 You took the assessment center or  
 8 participated in that for lieutenant.  
 9 A. Yes, sir.  
 10 Q. You sat on what you've called structured  
 11 interviews for team leader.  
 12 A. Yes, sir.  
 13 Q. What's the difference between the two? What was  
 14 different as an assessment as opposed to the  
 15 structured interview?  
 16 A. I consider assessment center very thorough where  
 17 it covers all broadness of the position. I  
 18 mean, from exercises in reference to medical  
 19 calls, pumping, driving, having good  
 20 conversational skills with the public, in  
 21 general. That's an assessment center. A  
 22 structured interview for a team leader, you come  
 23 in a room and you sit down and okay, we have a

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1 series of questions we want to ask you. Please  
 2 respond to the best of your ability. Let us  
 3 know when you're done, and that's it.  
 4 Q. Does assessment center involve more than just  
 5 questions and answers?  
 6 A. It could, depending on what type of promotion it  
 7 is. The ones where I conducted myself as an  
 8 assessor in a neighboring department, yes, it  
 9 did. But in Auburn all the scenarios in 1996  
 10 was inside a building, and it was just different  
 11 scenarios dealing with different broad areas  
 12 that you're going to be exposed to as an  
 13 officer.  
 14 Q. The assessment center that you participated in  
 15 for lieutenant, was that a question-and-answer  
 16 system?  
 17 A. A portion of it was, yes, sir.  
 18 Q. Was there more than just questions and answers?  
 19 A. Yes, sir. We had role plays. We had an  
 20 in-basket scenario. We had scenarios where we  
 21 were actually videotaped. I can't remember if  
 22 we did an interview or not. I'm not sure.  
 23 Q. Look at the second sentence of paragraph 16. It

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1 says: Coincidentally the policy changes  
 2 occurred when two African-American lieutenants  
 3 and one entry-level African-American  
 4 firefighter --  
 5 I assume that's Chris Turner.  
 6 A. Yes.  
 7 Q. -- became eligible for the position.  
 8 What's coincidental about that?  
 9 MR. HORSLEY: Object to the form. You  
 10 can answer.  
 11 A. Coincidentally, you know, we applied for the  
 12 positions. We became eligible and we applied.  
 13 And all of a sudden, you know, things changed.  
 14 Things changed to the point where, you know, we  
 15 had to take a test. Why not stick to the way  
 16 we've been doing things?  
 17 Q. Do you have any evidence that that change  
 18 occurred to exclude African-Americans from being  
 19 promoted to battalion chief?  
 20 MR. HORSLEY: Object to the form.  
 21 A. I don't know if it was applied or not, sir. I  
 22 don't know. But I know this. It just  
 23 coincidentally happened that way to the point

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1 where it hasn't happened in the past.  
 2 Q. And the last sentence of that paragraph says:  
 3 Seniority within the division was discarded as a  
 4 criteria for promotion to the battalion chief  
 5 position.  
 6 Do you recall one way or the other whether  
 7 or not in '96 for the last captain's promotion  
 8 seniority was a requirement?  
 9 A. I don't know if it was a requirement, but it was  
 10 heavily considered.  
 11 Q. And that's based on what?  
 12 A. Based on time in grade, based on the number of  
 13 years of experience, on the years you was --  
 14 Q. My question is: Why do you say that was a  
 15 requirement for captain in '96? Do you recall  
 16 seniority being a requirement for captain?  
 17 A. I don't recall that. I don't know, sir.  
 18 Q. Look at paragraph 17. It says you were denied  
 19 promotion to battalion chief in April 2006 and a  
 20 temporary assignment in January of 2005.  
 21 The 2005, is that the one where you filed  
 22 the grievance and the EEOC charge dealing with  
 23 Horace Clanton?

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<p>1 A. Yes, sir.</p> <p>2 Q. And if I recall, no lawsuit was filed as a</p> <p>3 result of that?</p> <p>4 A. No, sir.</p> <p>5 Q. And then you said the denial of the promotion</p> <p>6 was racially based.</p> <p>7 What facts do you have that you're not being</p> <p>8 promoted to battalion chief was because of --</p> <p>9 was racially based?</p> <p>10 MR. HORSLEY: Object to the form.</p> <p>11 A. I can't think of no other reason why. I mean,</p> <p>12 I've done everything that the Auburn Fire</p> <p>13 Division asked me to do up until this point. I</p> <p>14 was actually running the position prior to him</p> <p>15 making that decision, and it had been practiced</p> <p>16 and exercised prior to this incident that the</p> <p>17 available lieutenants fill these positions.</p> <p>18 Prior to the opportunity coming to me,</p> <p>19 Mr. Langley's brother, who was a lieutenant of</p> <p>20 the department, every time they needed a</p> <p>21 position to take place, he was given the</p> <p>22 opportunity. And he had more seniority than</p> <p>23 me. And basically at one point, Mr. Langley</p>	<p>1 evidence of racial discrimination in your not</p> <p>2 being promoted to battalion chief?</p> <p>3 A. What other reason would it be? I mean, I've</p> <p>4 done -- I'm qualified. I'm certified. I'm</p> <p>5 capable of doing the job. They make me do it</p> <p>6 anyway. So what other reason would it not be?</p> <p>7 That's the conclusion I was led to, and that's</p> <p>8 what I think.</p> <p>9 Q. Well, do you have any specific what you would</p> <p>10 consider evidence other than that's what you</p> <p>11 think?</p> <p>12 MR. HORSLEY: Object to the form. You</p> <p>13 can answer.</p> <p>14 A. Well, the only evidence I have, Mr. Morgan, is</p> <p>15 the day that the announcement was made and</p> <p>16 Mr. Clanton was asked to act as the A shift</p> <p>17 shift commander.</p> <p>18 Q. That was back in '05?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Well, let's talk about February of '06 when you</p> <p>21 applied for battalion chief and then you didn't</p> <p>22 score high enough on the written test. What</p> <p>23 evidence do you have that you were denied</p>
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<p>1 told me -- Mr. Larry Langley told me that he has</p> <p>2 more seniority than you; he's a lieutenant. So</p> <p>3 I'm just following suit.</p> <p>4 Q. Wait. Now, he was a lieutenant?</p> <p>5 A. Terry Langley was a lieutenant. Terry Langley</p> <p>6 is Larry Langley's brother.</p> <p>7 Q. And what positions was he given that you weren't</p> <p>8 given?</p> <p>9 A. In the absence of a captain or battalion chief,</p> <p>10 he would fill that role and it was based on</p> <p>11 seniority.</p> <p>12 Q. I thought you testified that you had also filled</p> <p>13 that role as captain or battalion chief.</p> <p>14 A. When he left I did. When he retired in February</p> <p>15 of 2004, I was the only lieutenant left, and I</p> <p>16 started filling those positions when asked to do</p> <p>17 so. Lieutenant Langley, Terry Langley, would do</p> <p>18 it consecutively. He would get the assignment,</p> <p>19 and it would be his until told to do something</p> <p>20 else. I would do it randomly when guys take off</p> <p>21 and -- When they take off, I'll step in.</p> <p>22 Q. Well, assume all that is true. Why is it that</p> <p>23 you say -- How do you consider that to be</p>	<p>1 promotion on that occasion because of your race?</p> <p>2 MR. HORSLEY: Object to the form. You</p> <p>3 can answer.</p> <p>4 A. I don't recall anything at this time,</p> <p>5 Mr. Morgan.</p> <p>6 Q. Look at paragraph 18. I think we've been</p> <p>7 through this. You're not aware of any Caucasian</p> <p>8 applicants for battalion chief in February of</p> <p>9 '06 that were given preferential treatment in</p> <p>10 the application process, test aids, or test</p> <p>11 grades, correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And in paragraph 19, it said: The City</p> <p>14 continues to violate a federal court order</p> <p>15 requiring them to alter hiring and promotion</p> <p>16 practices.</p> <p>17 First of all, you were hired in '94 as a</p> <p>18 black male, true?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And you had been hired earlier than that, I</p> <p>21 guess, in '91 as a student firefighter?</p> <p>22 A. Yes, sir.</p> <p>23 Q. What federal court order are you referring to</p>

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1 and how is the City of Auburn violating it as it  
 2 relates to promotion practices?  
 3 A. When I was hired in 1994, I was informed -- my  
 4 immediate supervisor when I went career was Dean  
 5 Garrett. No. My shift commander was Dean  
 6 Garrett. My immediate supervisor was a black  
 7 male by the name of Jessie Strickland. And at  
 8 the time, I didn't know anything about previous  
 9 lawsuits or whatever. But it was at that time  
 10 when they informed me that I was hired because I  
 11 was black, and that was in the previous lawsuit.  
 12 Q. Who told you that?  
 13 A. This came from the officers when I went on shift  
 14 as a career --  
 15 Q. Jessie Strickland?  
 16 A. It was Dean Garrett and Jessie Strickland  
 17 present.  
 18 Q. Told you you were hired because you were black?  
 19 A. Yeah. Basically in a nutshell, that's what it  
 20 was. And it was all contingent upon the lawsuit  
 21 that they had where they was made to hire three  
 22 African-Americans, three blacks.  
 23 Q. You don't believe that, do you?

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1 A. Oh, most definitely. I think I was hired  
 2 because I was the man for the job. It has  
 3 nothing to do with color.  
 4 Q. That's right.  
 5 Well, the court order that you're referring  
 6 to is one that occurred before you were hired as  
 7 a student firefighter as you understand it?  
 8 A. I guess it was, Mr. Morgan. I don't -- well --  
 9 Q. Have you ever read the court order?  
 10 A. No, sir. I don't know nothing about it.  
 11 Q. Well, is it fair to say that you really don't  
 12 know -- can't give me any examples about how is  
 13 it you claim that the City is violating the  
 14 court order as to promotion policies?  
 15 MR. HORSLEY: Object to the form. You  
 16 can answer.  
 17 A. All I know is that from previous lawsuits, there  
 18 were stipulations set, guidelines set. And the  
 19 City was to follow it in reference to the Auburn  
 20 Fire Division.  
 21 Q. And you got that understanding from Dean Garrett  
 22 and Jessie Strickland?  
 23 A. That's the first confirmation I got from it when

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1 I became career.  
 2 Q. Was from those two people?  
 3 A. They were my immediate and shift supervisor.  
 4 Q. And they are the same two people that told you  
 5 you were hired because you were black?  
 6 A. They pretty much told me.  
 7 Q. And you don't believe that?  
 8 A. No, sir.  
 9 Q. Look at Count II, Retaliation. I think it's  
 10 page 6. You've got here that the Plaintiffs  
 11 have engaged in statutorily protected  
 12 expressions, such as filing EEOC -- well, Equal  
 13 Opportunity charges and grievances against the  
 14 City.  
 15 What do consider to be statutorily protected  
 16 expressions?  
 17 MR. HORSLEY: Object to the form.  
 18 A. I guess -- Well, I don't want to guess about  
 19 it. I want to be direct with it.  
 20 MR. HORSLEY: If you don't know, don't  
 21 try and answer.  
 22 A. I don't know, Mr. Morgan.  
 23 Q. Let me ask you, then. Do you claim in this

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1 lawsuit that you were denied promotion to  
 2 battalion chief in retaliation for having filed  
 3 an earlier EEOC charge and grievances against  
 4 the City?  
 5 A. To my understanding, the reason why I didn't get  
 6 the opportunity to pursue the battalion chief  
 7 position is because I didn't pass the written  
 8 test. I don't understand to this day why it was  
 9 implemented as part as when in the past it never  
 10 has happened.  
 11 Q. You don't have any evidence that the reason you  
 12 weren't promoted is in retaliation for having  
 13 filed an EEOC charge or grievance, do you?  
 14 THE WITNESS: Can I talk to my  
 15 attorney for a minute?  
 16 MR. HORSLEY: All I can tell you is if  
 17 you don't know the answer to the  
 18 question, that needs to be your  
 19 answer.  
 20 A. I don't know the answer to that question,  
 21 Mr. Morgan.  
 22 Q. Your understanding is you didn't get promoted  
 23 because you didn't score high enough on the

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1 written test, true?

2 MR. HORSLEY: Object to the form.

3 THE WITNESS: Can I answer?

4 MR. HORSLEY: You can answer.

5 A. True.

6 Q. And as far as you know, the same written test

7 was given to everyone, blacks and whites?

8 A. As far as I know, sir, everyone that was present

9 got the same test.

10 Q. And you don't have any evidence or suspect that

11 the City sat around with anybody and said, hey,

12 let's make this test so that Gerald Stephens

13 can't pass it because we're mad at him for

14 filing an EEOC charge? You don't have any

15 evidence to that effect, do you?

16 MR. HORSLEY: Object to the form.

17 THE WITNESS: Can I answer?

18 MR. HORSLEY: Yeah.

19 A. No, sir, I don't have any evidence of that.

20 Q. In paragraph 31, you make reference to protected

21 expressions. Do you see that?

22 A. Yes.

23 Q. Do you include anything in protected expressions

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1 other than what you refer to in paragraph 30

2 being the EEOC charge and the grievances? Is

3 there anything else that you consider to be

4 protected expressions, if you consider them to

5 be, other than the EEOC charge and the

6 grievances, if you know one way or the other?

7 A. I don't know one way or the other, sir.

8 Q. Look at Count III. And the first question is --

9 In paragraph 34 in quotes, is the phrase

10 "built-in headwind for minority groups and

11 unrelated to measuring job capability".

12 What is a built-in headwind? What do you

13 understand that to be?

14 MR. HORSLEY: Object to the form. He

15 didn't draft the complaint.

16 MR. MORGAN: I understand.

17 A. I don't know, sir, at this point.

18 Q. Outside of this lawsuit and excluding any

19 conversations with your attorney, have you ever

20 heard of the phrase "built-in headwind" before?

21 A. I don't recall ever hearing anything of that

22 nature, sir.

23 Q. What is your understanding as to your claim that

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1 the promotion practice had a disparate impact?

2 In your terms, what does that mean?

3 MR. HORSLEY: Object to the form. You

4 can answer.

5 A. All I know, Mr. Morgan, is that as an employee

6 of the Auburn Fire Division being hired in 1994,

7 there have only been one person hired with the

8 division, African-American, as a career

9 firefighter, and that was a guy by the name of

10 Roderick Torbert.

11 Q. Who?

12 A. Roderick Torbert. And other than myself being

13 promoted in 1996, the only other person I know

14 that was promoted is Mr. Ogletree. Since then

15 no African-Americans have been promoted or

16 hired, and I know that there are

17 African-Americans out there who have applied and

18 who are qualified for those positions. I don't

19 know them directly. I don't know them

20 specifically, but I know some who have applied

21 for a promotion and for career firefighter

22 positions, and it's never happened.

23 Q. Let me kind of break that down because I want to

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1 be clear on it.

2 Is your complaint about a disparate impact

3 related to the hiring or non-hiring of blacks,

4 or is it related to the promotion or

5 non-promotion of blacks?

6 MR. HORSLEY: Object to the form.

7 A. Both. I'm concerned about both of those issues,

8 Mr. Morgan.

9 Q. So you think that the City's hiring practices

10 have a disparate impact on blacks?

11 A. Yes, sir.

12 Q. Tell me what you mean by a disparate impact on

13 blacks.

14 MR. HORSLEY: Object to the form. Go

15 ahead.

16 A. They haven't hired any, Mr. Morgan, or promoted

17 any, since 1996.

18 Q. And what do you mean by a disparate impact

19 against blacks on promotions?

20 MR. HORSLEY: Same objection. Go

21 ahead.

22 A. They haven't promoted any.

23 Q. In your opinion, just the fact that none have

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<p>1 been hired is evidence of the disparate impact?</p> <p>2 A. They have not hired or promoted qualified</p> <p>3 African-Americans since 1996.</p> <p>4 Q. And that's the basis of your disparate impact</p> <p>5 claim?</p> <p>6 A. Yes.</p> <p>7 Q. How did you rate Chris Turner on the team leader</p> <p>8 interviews?</p> <p>9 A. I never sat on the interview with -- on the</p> <p>10 board of an interview for Chris Turner. I've</p> <p>11 never sat --</p> <p>12 Q. For team leader you never sat on one that he</p> <p>13 applied for?</p> <p>14 A. No, sir, I never did.</p> <p>15 Q. Was it your experience that the team leader</p> <p>16 interviews that -- panels that you sat on always</p> <p>17 included at least one and usually two blacks?</p> <p>18 A. One if not two, yes, sir.</p> <p>19 Q. Well, let's focus in on the promotion to</p> <p>20 battalion chief which you applied for and did</p> <p>21 not receive. What is there about that procedure</p> <p>22 to battalion chief that you think had a</p> <p>23 disparate impact on blacks?</p>	<p>1 the city is steadily growing. Responsibilities</p> <p>2 are steadily increasing. Our job</p> <p>3 responsibilities are, you know, growing more</p> <p>4 than they have been in the past. And I guess --</p> <p>5 Well, I won't guess about it.</p> <p>6 Just the growth of the city, and they</p> <p>7 thought maybe they needed a title change for</p> <p>8 some reason or another, and they pursued it.</p> <p>9 Q. Do you claim that the title change alone from</p> <p>10 captain to battalion chief -- do you make a</p> <p>11 claim that that had some sort of racial</p> <p>12 discrimination or racially discriminatory effect</p> <p>13 toward blacks, changing the name from captain to</p> <p>14 battalion chief?</p> <p>15 MR. HORSLEY: Object to the form.</p> <p>16 A. I don't know what the reason was, Mr. Morgan. I</p> <p>17 don't know the reason for pursuing it, the</p> <p>18 reason for wanting to change it. I don't have a</p> <p>19 clue.</p> <p>20 Q. My question is: Do you consider that to be</p> <p>21 somehow racially discriminatory, to change the</p> <p>22 title from captain to battalion chief?</p> <p>23 MR. HORSLEY: Object to the form. I</p>
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<p>1 MR. HORSLEY: Object to the form. You</p> <p>2 can answer.</p> <p>3 A. When the four captains received their battalion</p> <p>4 chief rank, it was done by a title change. No</p> <p>5 test. No procedures. No structured interview.</p> <p>6 No assessment center. I mean, nothing was set</p> <p>7 in stone other than a title change until after</p> <p>8 the fact when they decided to go this route</p> <p>9 right here.</p> <p>10 Q. This route meaning the test?</p> <p>11 A. The test -- The written test and the cutoff</p> <p>12 score and everything else that went along with</p> <p>13 it that I didn't experience.</p> <p>14 Q. Well, let's go back to the four captains.</p> <p>15 A. Okay.</p> <p>16 Q. Did anything occur in terms of their employment</p> <p>17 other than they were renamed battalion chief</p> <p>18 from captain?</p> <p>19 A. No, sir.</p> <p>20 Q. Did their duties and responsibilities remain the</p> <p>21 same?</p> <p>22 A. The only thing I say had something to do with</p> <p>23 that is the actual growth of the city. I mean,</p>	<p>1 think he's already answered the</p> <p>2 question.</p> <p>3 A. No, sir, I don't.</p> <p>4 Q. Now, in terms of the actual battalion chief</p> <p>5 promotion procedure that you were involved in,</p> <p>6 what is there about it that you think had a</p> <p>7 disparate impact on blacks?</p> <p>8 MR. HORSLEY: Object to the form. You</p> <p>9 can answer.</p> <p>10 A. Can you ask me that again, please, sir?</p> <p>11 Q. In terms of the battalion chief promotion</p> <p>12 process in which you participated, what is it</p> <p>13 about it that you think had a disparate impact</p> <p>14 on blacks?</p> <p>15 MR. HORSLEY: Object to the form.</p> <p>16 A. The written test.</p> <p>17 Q. What is there about the written test that you</p> <p>18 think had a disparate impact?</p> <p>19 MR. HORSLEY: Same objection. Go</p> <p>20 ahead.</p> <p>21 A. As stated before, Mr. Morgan, on previous</p> <p>22 incidents, the written test has never been an</p> <p>23 option in the promotion -- a written test with a</p>



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<p>1 cutoff score has never been part of the</p> <p>2 promotion procedure within the division.</p> <p>3 Q. And I don't want to keep on with this, but I</p> <p>4 want to be clear. Is it your position that just</p> <p>5 by giving a written test that the effect of that</p> <p>6 was to have a disparate impact on blacks?</p> <p>7 MR. HORSLEY: Object to the form. You</p> <p>8 can answer.</p> <p>9 A. I don't recall that at this time, Mr. Morgan.</p> <p>10 Q. What I probably should have done is ask this</p> <p>11 question first.</p> <p>12 What does disparate impact mean to you?</p> <p>13 What do the terms "disparate impact" mean to</p> <p>14 you?</p> <p>15 A. Basically it means to me that -- Let me see if I</p> <p>16 can come up with a specific --</p> <p>17 MR. HORSLEY: That's a legal question.</p> <p>18 A. No, sir.</p> <p>19 MR. HORSLEY: It's a legal term, and I</p> <p>20 don't want you answering questions</p> <p>21 like that.</p> <p>22 A. No, sir. I don't have any comment at this time.</p> <p>23 Q. I'm not asking a legal definition. I'm just</p>	<p>1 Q. In the big picture, what do the battalion chiefs</p> <p>2 do?</p> <p>3 A. They are shift commanders. They oversee all</p> <p>4 operations per shift, including the firefighters</p> <p>5 that work under them in reference to the safety</p> <p>6 of the city, the whole -- Everything in</p> <p>7 reference to.</p> <p>8 Q. And there are four of them?</p> <p>9 A. Yes, sir, it is.</p> <p>10 Q. And does each one have a different area of</p> <p>11 responsibility?</p> <p>12 A. Each one of them carry out the same</p> <p>13 responsibilities. The responsibilities apply to</p> <p>14 each battalion chief, other than the one who is</p> <p>15 assigned to administrative duties.</p> <p>16 (Defendant's Exhibit 13 marked for</p> <p>17 identification.)</p> <p>18 Q. Let me show you Defendant's Exhibit 13 and ask</p> <p>19 you if you recognize this as the charge of</p> <p>20 discrimination when you submitted to the EEOC.</p> <p>21 Is that your charge of discrimination?</p> <p>22 A. Yes, sir.</p> <p>23 (Off-the-record discussion followed by</p>
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<p>1 asking what do you think it means.</p> <p>2 MR. HORSLEY: I don't want you trying</p> <p>3 to think up an answer.</p> <p>4 MR. MORGAN: No. Don't sit here and</p> <p>5 just answer it.</p> <p>6 Q. Do you know what disparate impact means one way</p> <p>7 or the other?</p> <p>8 A. No, sir. I don't have any comment at this time.</p> <p>9 Q. Before they became battalion chiefs, were those</p> <p>10 people that held that position captains or were</p> <p>11 they shift commanders?</p> <p>12 A. The title that I understand is shift</p> <p>13 commander/captain or shift commander/battalion</p> <p>14 chief. Captains or battalion chief are</p> <p>15 commanders like lieutenants are station</p> <p>16 officers.</p> <p>17 Q. So captains had become shift commanders which</p> <p>18 had become battalion chiefs?</p> <p>19 A. Captains are shift commanders and the title was</p> <p>20 changed to battalion chief.</p> <p>21 Q. All of which was just, as you understand it, a</p> <p>22 name change?</p> <p>23 A. Title change.</p>	<p>1 a brief recess.)</p> <p>2 Q. (Continuing by Mr. Morgan) Let me ask you about</p> <p>3 some of these folks on the witness list and</p> <p>4 specifically what they know about your case.</p> <p>5 William Thompson, who is he and what does</p> <p>6 he know about your case?</p> <p>7 A. William Thompson used to be employed with the</p> <p>8 student firefighter program. Of course, he's a</p> <p>9 black male. And Mr. Thompson was terminated on</p> <p>10 a first offense of an incident that occurred</p> <p>11 between him and another temporary full-time</p> <p>12 employee, who is a PSO, Public Safety Officer.</p> <p>13 Why he was terminated on a first offense, I</p> <p>14 don't know, but he shouldn't have never been</p> <p>15 terminated.</p> <p>16 Q. And he's a black male?</p> <p>17 A. Yes, sir, he is.</p> <p>18 Q. When was he terminated?</p> <p>19 A. I don't remember, Mr. Morgan.</p> <p>20 Q. Well, does he know anything about you not being</p> <p>21 promoted to battalion chief?</p> <p>22 A. I don't know exactly what he knows, but he could</p> <p>23 have been told something of that nature. I</p>



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1 don't know for sure.

2 Q. Was he still employed with the City when you

3 applied for battalion chief?

4 A. I don't recall he was, sir.

5 Q. Have you had any conversations with him about

6 race discrimination?

7 A. I haven't seen Thompkins in a long time.

8 Q. Anything else that you have him listed for other

9 than the fact that he was terminated on a first

10 offense and you don't think he should have been

11 terminated on a first offense?

12 A. No, sir.

13 Q. And do you know what that offense was?

14 A. I really don't know. I don't know why they

15 decided to do that.

16 Q. Was he a firefighter?

17 A. He was a student firefighter.

18 Q. Well, let me ask you this. I'm not being

19 disrespectful, but what business would it be of

20 yours as to why he was terminated?

21 A. Because I've seen other things happen with other

22 student firefighters who were white, and they

23 had multiple times to correct the problem, do

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1 better, whatever. There were times when they've

2 done things that, yes, they should have been

3 fired on the first offense because it involved

4 the police department. Police were notified.

5 They were involved. They committed an act that

6 I deem to be very serious. And if I was their

7 immediate supervisor, I would have recommended

8 that they be terminated.

9 Q. And can you give me names of any of them?

10 A. Michael Garrett Thee; a young man by the name of

11 Hale -- last name Hale, H-A-L-E; a young man by

12 the name of Graham -- last name Graham,

13 G-R-A-H-A-M. That's just a few that come off

14 the top of my head.

15 Q. Who is Jeremy Patterson?

16 A. He also is a black male, student firefighter

17 program, or was.

18 Q. And was he there when you applied for promotion

19 to battalion chief?

20 A. No, sir, he wasn't.

21 Q. To your knowledge does he know anything about

22 your case?

23 A. I have talked to Mr. Patterson.

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1 Q. And what has he told you?

2 A. Basically he understand who the battalion chiefs

3 were who were promoted, and he asked me on

4 occasions how did that happen and what took

5 place.

6 Q. Well, does he have any evidence or give you any

7 information or facts that you were not promoted

8 because of your race?

9 A. I don't recall that. I don't know.

10 Q. Did he voluntarily leave the student firefighter

11 program?

12 A. He graduated from Auburn University and obtained

13 another job, and -- I think he resigned and took

14 on a new job and left the program.

15 Q. So he stayed in the program. What is the up

16 side to being in the student firefighter

17 program? They pay for your college education?

18 A. They do --

19 Q. Room and board?

20 A. They provide them a place to live. They have

21 tuition reimbursement. Now they allow them to

22 pay into the retirement program.

23 Q. And then you have Chris Turner. What does Chris

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1 Turner know about your complaint?

2 A. Chris Turner, of course, him and I went through

3 recruiting school together in '91 and have

4 pretty much worked our entire career together,

5 you know, per shift assignments.

6 Q. Well, do you know of any specific information he

7 has about you not being promoted?

8 A. Well, Chris Turner I think has been overlooked

9 several times on promotion himself; therefore,

10 he's witnessed other incidents to occur. What

11 his reasons are, I don't recall. But as I

12 stated, Chris Turner and I have pretty much

13 worked our career together.

14 Q. I guess I'm pronouncing this right. Marzella

15 Ogletree?

16 MR. OGLETREE: That's my wife.

17 Q. His wife. Do you know her?

18 A. I've seen her before, but I don't know her, no,

19 sir.

20 Q. And then your wife. What does your wife know

21 about your complaints or your lawsuit?

22 A. Basically what I've told her and shared with her

23 from what I received from my attorney.

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<p>1 Q. She doesn't have any firsthand knowledge of what</p> <p>2 goes on at the fire department, does she?</p> <p>3 A. She don't work there, no, sir.</p> <p>4 Q. Then you have Adelner Franklin Thomas, district</p> <p>5 director, EEOC. What does -- I guess that's a</p> <p>6 male. What does he know or she know?</p> <p>7 A. I don't have -- I don't know of anything of</p> <p>8 that, Mr. Morgan.</p> <p>9 Q. You've got Doug Watkins, former city manager.</p> <p>10 A. Yes, sir.</p> <p>11 Q. What does he know about your battalion chief</p> <p>12 promotion?</p> <p>13 A. I don't know if he knows anything, Mr. Morgan,</p> <p>14 but --</p> <p>15 Q. He wasn't there at that time, was he?</p> <p>16 A. He was the one who implemented or helped</p> <p>17 implement the title change promotion, whatever</p> <p>18 you want to call it, from captain to battalion</p> <p>19 chief.</p> <p>20 Q. Do you know specifically what he did in that</p> <p>21 regard?</p> <p>22 A. I don't know specifically what he did.</p> <p>23 Q. Do you know of anything else that he's done in</p>	<p>1 Q. Jason Brown, who is Jason Brown?</p> <p>2 A. Jason Brown is a station officer, one of those</p> <p>3 that -- one of the thirteen signatures on the</p> <p>4 paperwork that allowed them to -- allowed them</p> <p>5 the title change or promotion, whatever you want</p> <p>6 to call it, to lieutenant.</p> <p>7 Q. Is he a white male?</p> <p>8 A. He is a white male.</p> <p>9 Q. What, if anything, does he know about your</p> <p>10 complaints in this lawsuit?</p> <p>11 A. I don't know if he knows anything, Mr. Morgan.</p> <p>12 Q. Did he sit for the promotion to battalion chief?</p> <p>13 A. He did, sir.</p> <p>14 Q. Did he make it to the top five?</p> <p>15 A. I don't know, sir, if he did or not.</p> <p>16 Q. Was he promoted to battalion chief?</p> <p>17 A. No, sir, he was not.</p> <p>18 Q. And then you've got Paden Payton. Is he the one</p> <p>19 you told me about earlier with the hazing</p> <p>20 incident?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And when did he leave the City?</p> <p>23 A. I can't remember the date right off, sir, but it</p>
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<p>1 terms of the battalion chief position other than</p> <p>2 his involvement in the title and name change?</p> <p>3 A. I don't know of anything.</p> <p>4 Q. And he was not present when you were -- went</p> <p>5 through the process?</p> <p>6 A. No, sir.</p> <p>7 Q. And you've got Horace Clanton. He's one of</p> <p>8 those that signed the grievance with you?</p> <p>9 A. Yes, sir.</p> <p>10 Q. In terms of racial discrimination, do you know</p> <p>11 of any information or knowledge that Mr. Clanton</p> <p>12 has about you and racial discrimination?</p> <p>13 A. I don't know of anything, sir.</p> <p>14 Q. Rodney Hartsfield?</p> <p>15 A. I don't know of anything.</p> <p>16 Q. And he was promoted to battalion chief.</p> <p>17 And then you've got Michael -- Matthew</p> <p>18 Jordan. Do you know of anything he knows about</p> <p>19 you being racially discriminated against?</p> <p>20 A. I don't know if he knows anything, sir.</p> <p>21 Q. Joseph Lovvorn, do you know anything he knows</p> <p>22 about your case, this lawsuit?</p> <p>23 A. No, sir, I don't know if he knows anything.</p>	<p>1 was within the last two years.</p> <p>2 Q. Was he still employed with the City when you</p> <p>3 went through the promotion procedure process for</p> <p>4 battalion chief?</p> <p>5 A. Yes, sir, he was.</p> <p>6 Q. Has he told you any information or knowledge he</p> <p>7 has about your lawsuit or your claims of racial</p> <p>8 discrimination?</p> <p>9 A. No, sir.</p> <p>10 Q. Then you've got the Auburn city council</p> <p>11 members. Have you discussed your case with any</p> <p>12 members of the Auburn city council?</p> <p>13 A. No, sir.</p> <p>14 Q. Do you know anything that the Auburn city</p> <p>15 council members know about your claim of racial</p> <p>16 discrimination?</p> <p>17 A. No, sir.</p> <p>18 Q. Joey Darby, do you know anything he knows about</p> <p>19 your case or why he's listed as a witness?</p> <p>20 A. I don't know anything that he knows.</p> <p>21 Q. Then you have Terry Walker. Who is Terry</p> <p>22 Walker?</p> <p>23 A. He is the former training officer -- training</p>

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1 chief who recently retired.  
 2 Q. Do you know anything that he knows about your  
 3 case?  
 4 A. No, sir.  
 5 Q. Do you know why he's listed as a witness?  
 6 A. Don't have a clue.  
 7 Q. Ronnie Blankenship, who is he?  
 8 A. He was my first actual supervisor when I became  
 9 a student. And to make a long story short, he  
 10 was the fire chief up until '96-'97 --  
 11 1996-1997. He went from team leader to fire  
 12 chief, and then from fire chief he went on and  
 13 retired and went elsewhere.  
 14 Q. He left the City in '96 or '97?  
 15 A. Yes, sir.  
 16 Q. Do you know anything that he knows about your  
 17 claims of racial discrimination?  
 18 A. I don't know if -- I don't know what he knows,  
 19 Mr. Morgan.  
 20 Q. But he hasn't been employed with the City since  
 21 '97 thereabouts?  
 22 A. '96-'97, within that range.  
 23 Q. And Stephanie King, you've told me your

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1 observations of her involvement in this  
 2 process. Anything that she knows or any other  
 3 reason she would be listed as a witness other  
 4 than her role in the assessment -- I mean, the  
 5 orientation process?  
 6 A. No, sir. I don't know of anything.  
 7 Q. Have you ever had any conversations with her and  
 8 complained about racial discrimination?  
 9 A. No, sir.  
 10 Q. Ever complained about the test to her?  
 11 A. No, sir.  
 12 Q. And you've got Joe Bailey, and I know you said  
 13 he was the hearing officer.  
 14 A. Yes, sir.  
 15 Q. To your knowledge does he know anything else  
 16 other than what he heard as the hearing officer?  
 17 A. I don't know what else he have heard or knows or  
 18 anything, Mr. Morgan.  
 19 Q. Have you ever discussed your case with him?  
 20 A. No, sir.  
 21 Q. Michael Thee. Who is Michael Thee?  
 22 A. Mr. Thee is a student firefighter of the Auburn  
 23 Fire Division.

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1 Q. And is he still a firefighter?  
 2 A. Yes, sir.  
 3 Q. Still a student firefighter?  
 4 A. Yes, sir. To my knowledge he is.  
 5 Q. What, if anything, does he know about your case?  
 6 A. I don't know if he knows anything, Mr. Morgan.  
 7 Q. Has he received any favorable treatment in your  
 8 opinion?  
 9 A. I think he has.  
 10 Q. What kind of favorable --  
 11 A. Being that he was involved in the incident at  
 12 work, which according to the rules and the  
 13 personnel procedures of the City, what he did  
 14 was considered a major offense and he should  
 15 have been dismissed.  
 16 Q. What was that major offense?  
 17 A. He went in and changed documents, provided false  
 18 documents in a calendar that belonged to me  
 19 while I was on duty because he was running late  
 20 and had been late for work several consecutive  
 21 times and knew he was in trouble. And he knew  
 22 what was going to happen to you if it continued  
 23 because I made sure I let him know each time

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1 that it occurred what was going to happen.  
 2 Q. And did you report that, that he changed  
 3 documents?  
 4 A. I documented and reported to my immediate  
 5 supervisor, and it did go up the chain.  
 6 Q. What happened to him?  
 7 A. If I'm thinking correctly, he received a  
 8 suspension for, I think it was, four shifts but  
 9 was allowed to return back to work, and he still  
 10 works there.  
 11 Q. Has he applied for any promotions?  
 12 A. I don't know if he applied for any promotions or  
 13 not, Mr. Morgan.  
 14 Q. Then you've got Casey McCloud -- McLeod?  
 15 A. McLeod.  
 16 Q. Who is that?  
 17 A. Casey McLeod also was a student firefighter, but  
 18 presently he is now a fire career firefighter.  
 19 Q. White male?  
 20 A. White male.  
 21 Q. And does he know anything about your case?  
 22 A. I don't know if he knows anything or not,  
 23 Mr. Morgan.

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<p>1 Q. Have you discussed it with him?</p> <p>2 A. No, sir, I have not.</p> <p>3 Q. Did he apply for any promotions?</p> <p>4 A. I don't know if he have or not, sir.</p> <p>5 Q. Any problems that you're aware of with him?</p> <p>6 A. Presently, no, sir.</p> <p>7 Q. Well, in the past?</p> <p>8 A. Well, there have been some incidents where he</p> <p>9 also was late for work, an incident where he had</p> <p>10 an unexcused absence that pretty much was said</p> <p>11 or told to me through my immediate supervisor at</p> <p>12 the time, which was Johnny Lawrence, that we're</p> <p>13 not going to worry about this; it never happened</p> <p>14 as far as I'm concerned.</p> <p>15 Q. Did you complain to anybody about that above</p> <p>16 your supervisor?</p> <p>17 A. I complained to Chief Lawrence directly and told</p> <p>18 him that I didn't think it was right.</p> <p>19 Q. To Chief Lawrence?</p> <p>20 A. Yes, sir. Johnny Lawrence. That was my</p> <p>21 immediate supervisor at the time.</p> <p>22 Q. Did you complain to anybody above your immediate</p> <p>23 supervisor?</p>	<p>1 Amy Weaver?</p> <p>2 A. No, sir.</p> <p>3 Q. Do you know who she is?</p> <p>4 A. No, sir.</p> <p>5 Q. Lindsey Field, do you know who that is?</p> <p>6 A. No, sir.</p> <p>7 Q. Clinton Hammond, do you know who he is?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Does he know anything about your claims of</p> <p>10 racial discrimination?</p> <p>11 A. Mr. Hammond is deceased. I don't know what he</p> <p>12 knew when he was living.</p> <p>13 Q. Do you remember what year he died?</p> <p>14 A. I don't remember the exact year, but -- Maybe</p> <p>15 eight, nine years ago maybe.</p> <p>16 Q. Jimmy Lee Brown, who is that?</p> <p>17 A. He was the battalion chief of the Auburn Fire</p> <p>18 Division, the one who had the health issues</p> <p>19 that --</p> <p>20 Q. Hammock?</p> <p>21 A. No.</p> <p>22 Q. Horace Clanton?</p> <p>23 A. Horace Clanton, yes, sir, was assigned to fill</p>
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<p>1 A. Well, I talked to Mr. Langley about it, too.</p> <p>2 Larry Langley.</p> <p>3 Q. And what did he say?</p> <p>4 A. I also talked to -- Well, let me back up.</p> <p>5 Johnny Lawrence was filling in for my supervisor</p> <p>6 at the time who was Danny Leverette. So I spoke</p> <p>7 to Johnny Lawrence and I talked to Danny</p> <p>8 Leverette and I also talked to Larry Langley.</p> <p>9 Q. But you're not aware of anything he knows about</p> <p>10 you not being promoted?</p> <p>11 A. I don't know if he knows anything.</p> <p>12 Q. How about Dean Garrett? Does he know anything</p> <p>13 about you not being promoted?</p> <p>14 A. I don't know if he knows anything or not, sir.</p> <p>15 Q. Was he still with the City when you applied for</p> <p>16 the battalion chief?</p> <p>17 A. I think he had retired.</p> <p>18 Q. Have you ever discussed with him any complaints</p> <p>19 you have about racial discrimination?</p> <p>20 A. No, sir.</p> <p>21 Q. Amy Weaver, it says she's -- I don't know what</p> <p>22 it says she is, but she takes care of the</p> <p>23 Auburn-Opelika News. Have you ever talked to an</p>	<p>1 his position in his absence.</p> <p>2 Q. Was Mr. Brown still a battalion chief when you</p> <p>3 applied for the promotion to battalion chief?</p> <p>4 A. Was he? I don't recall if he was or not,</p> <p>5 Mr. Morgan. It was right during the time -- I</p> <p>6 think he was maybe on sick leave or something of</p> <p>7 that nature. Let me see. Yes, sir, he was</p> <p>8 still employed there.</p> <p>9 Q. Have you had any conversations with him about</p> <p>10 racial discrimination or your claims?</p> <p>11 A. No, sir.</p> <p>12 Q. Who is Wendall Willis?</p> <p>13 A. He was a guy that I used to work with years</p> <p>14 ago. He was a career firefighter. He doesn't</p> <p>15 work there anymore. It's been a long time since</p> <p>16 he worked there.</p> <p>17 Q. Do you know anything that he knows about your</p> <p>18 case?</p> <p>19 A. No, sir.</p> <p>20 Q. Have you talked to him about it?</p> <p>21 A. No, sir.</p> <p>22 Q. James Lyle?</p> <p>23 A. Yes, I know him.</p>

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1 Q. Who is he?	1 Q. Dexter Card. Do you know Dexter Card?
2 A. Also a career firefighter years ago.	2 A. Lieutenant Dexter Card, yes, sir.
3 Q. Has he been gone a long time?	3 Q. Does he know anything about your case?
4 A. Yes, sir.	4 A. I don't know what he knows, sir.
5 Q. Have you discussed your lawsuit with him?	5 Q. Have you discussed your lawsuit with him?
6 A. No, sir.	6 A. No, sir.
7 Q. Have you talked to him about it or seen him	7 Q. And he wasn't there when you took the test?
8 recently?	8 A. No, sir.
9 A. No, sir.	9 Q. William Felton?
10 Q. Tommy James?	10 A. Yes, sir. Retired lieutenant.
11 A. Yes, sir, I know him.	11 Q. Has he been gone a long time?
12 Q. Who is Tommy James?	12 A. Yes, sir.
13 A. Tommy James is a retired team leader from the	13 Q. Have you discussed your lawsuit with him?
14 Auburn Fire Division.	14 A. No, sir.
15 Q. Was he retired when you applied for the	15 Q. Thomas Scott?
16 battalion chief?	16 A. Yes, sir. Retired -- Well, actually, he was
17 A. Yes, sir.	17 terminated. Terminated career firefighter.
18 Q. Do you know anything that he knows about your	18 Q. What did he do?
19 case?	19 A. I have no idea. Happened years ago.
20 A. No, sir.	20 Q. Have you discussed your case with him?
21 Q. Have you discussed your case with him?	21 A. I haven't seen him, no, sir.
22 A. No, sir.	22 Q. Steve Heart, who is he? H-E-A-R-T, Steve
23 Q. Kenneth Lee Smith?	23 Heart? Name doesn't sound familiar?
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1 A. Used to be a lieutenant in the fire division but	1 A. Don't ring a bell with me.
2 was demoted to firefighter approximately a	2 Q. Larry Stanley, does that name sound familiar?
3 couple of months before he actually retired.	3 A. Don't ring a bell with me, sir.
4 Q. How long has he been retired?	4 Q. Gary Jones?
5 A. Over ten years.	5 A. Yes, sir, I know him.
6 Q. White male?	6 Q. Who is that?
7 A. White male.	7 A. Gary Jones is actually the brother to Ronnie
8 Q. Do you know anything he knows about your case?	8 Jones. Never had an opportunity to work with
9 A. No, sir.	9 him. Haven't seen him.
10 Q. Have you discussed your case with him?	10 Q. Does he know anything about your case?
11 A. No, sir.	11 A. I don't know if he knows anything or not.
12 Q. Ron Jones?	12 Q. Have you discussed it with him?
13 A. Ronnie Jones?	13 A. No, sir.
14 Q. Yeah.	14 Q. Was he gone when you took the promotion?
15 A. Ronald Jones? He is a retired shift commander,	15 A. Yes, sir.
16 captain, at the time.	16 Q. Jan Dempsey?
17 Q. Was he still with the City when you applied for	17 A. Former mayor of the City of Auburn.
18 battalion chief?	18 Q. Have you discussed your complaints with her?
19 A. No, sir.	19 A. No, sir.
20 Q. Do you know anything he knows about your case?	20 Q. Have you discussed this lawsuit with her?
21 A. I don't know if he knows anything, sir.	21 A. No, sir.
22 Q. Have you discussed it with him?	22 Q. Ron Tahita, do you know who he is?
23 A. No, sir.	23 A. That names sound familiar, but I don't know who



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<p>1 he is.</p> <p>2 Q. Do you know who Ellis Mitchell is?</p> <p>3 A. Yes, sir, I do.</p> <p>4 Q. Had any conversation with Ellis Mitchell about</p> <p>5 this lawsuit?</p> <p>6 A. No, sir.</p> <p>7 Q. There were a number of documents that were</p> <p>8 disclosed, and I'm not going to go through all</p> <p>9 of them, but let me ask this. Toward the end of</p> <p>10 these documents are a lot of paperwork dealing</p> <p>11 with various employees, it looks like, with the</p> <p>12 fire department: Michael Thee, Harvard</p> <p>13 Graham --</p> <p>14 What does this paperwork have to do with</p> <p>15 your lawsuit?</p> <p>16 A. Basically those papers are progressive</p> <p>17 disciplinary procedures that were implemented on</p> <p>18 them for improperly doing something in reference</p> <p>19 to the Auburn Fire Division. Could vary from</p> <p>20 being late for work or doing something they</p> <p>21 don't supposed to do.</p> <p>22 Q. And Dave Bradley?</p> <p>23 A. Yes, sir. I recall him being late for work one</p>	<p>1 Q. Scott Chinowith?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Other than documenting that these people didn't</p> <p>4 do something that you thought they should do --</p> <p>5 Cusak, Dennis Ballard, Kanaxi Sufom (phonetic),</p> <p>6 Austin Bales -- do they have any bearing on you</p> <p>7 not being promoted?</p> <p>8 A. No, sir. But when we talked about</p> <p>9 Mr. Thompkins --</p> <p>10 Q. About who?</p> <p>11 A. William Thompkins. You remember you mentioned</p> <p>12 that name to me at the beginning? What I think</p> <p>13 should have happened to Thompkins is basically</p> <p>14 what happened to all these other guys you just</p> <p>15 looked through, if anything. I mean, he didn't</p> <p>16 do anything directly or violated any rules or</p> <p>17 regulations within the personnel policies. And</p> <p>18 what happened to all those people you just saw</p> <p>19 should have happened to him. I think he should</p> <p>20 have never been terminated.</p> <p>21 Q. Before I get to my main question, let me be</p> <p>22 clear. Those documents don't have anything to</p> <p>23 do with you not being promoted, though, true?</p>
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<p>1 time.</p> <p>2 Q. Walter Peacock?</p> <p>3 A. Uh-huh (positive response).</p> <p>4 Q. Katie Hartsill?</p> <p>5 A. Hartsill.</p> <p>6 Q. Casey McLeod.</p> <p>7 Other than being paperwork on people that</p> <p>8 looks like most of them were late, does it have</p> <p>9 some significance to your not being promoted to</p> <p>10 battalion chief?</p> <p>11 A. No. Those are just documentation as an officer</p> <p>12 that I must do when these people don't comply to</p> <p>13 the rules of the division.</p> <p>14 Q. Just documentation showing that you disciplined</p> <p>15 people when you thought they needed to be</p> <p>16 disciplined?</p> <p>17 A. According to the personnel policies of the City</p> <p>18 of Auburn, whenever they violate any of their</p> <p>19 rules, it is my job to document and submit it to</p> <p>20 the immediate supervisor for any other action to</p> <p>21 be taken, if necessary. All I can do is make a</p> <p>22 request in reference to what I think should</p> <p>23 happen.</p>	<p>1 A. No, sir.</p> <p>2 Q. No, sir meaning I'm correct?</p> <p>3 A. You're correct.</p> <p>4 Q. And whatever happened to Mr. Thompkins you don't</p> <p>5 know for an actual fact, do you?</p> <p>6 A. I didn't make that decision. I don't know.</p> <p>7 Q. But whatever happened to Mr. Thompkins, he</p> <p>8 didn't file a lawsuit, did he?</p> <p>9 A. Not that I'm aware. I don't know if he filed</p> <p>10 one or not, sir.</p> <p>11 Q. But you're not familiar or know what he actually</p> <p>12 did or didn't do, do you?</p> <p>13 A. I don't know what he did, sir.</p> <p>14 Q. Now, let me ask you about the folks I represent</p> <p>15 and what it is that you think these people have</p> <p>16 done to constitutes racial discrimination and</p> <p>17 why you have sued them.</p> <p>18 The first one is Larry Langley.</p> <p>19 MR. HORSLEY: I'm going to do a</p> <p>20 blanket objection to all these</p> <p>21 questions because I think they ask</p> <p>22 for legal conclusions. But go</p> <p>23 ahead and answer them.</p>



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<p>1 A. Larry Langley -- Ask your question.</p> <p>2 Q. What is it that Larry Langley has done that you</p> <p>3 think is racially discriminatory or retaliation</p> <p>4 and caused you to sue him in this lawsuit?</p> <p>5 A. Mr. Langley have not allowed me to -- Let me</p> <p>6 back up.</p> <p>7 I feel like -- I think Mr. Langley has been</p> <p>8 unfair to me as a fire lieutenant and the</p> <p>9 responsibilities I have and the position I</p> <p>10 should fill as a fire lieutenant in the absence</p> <p>11 of or in reference to whatever the job may be.</p> <p>12 I don't think he's been honest with me about</p> <p>13 several things throughout my career. I think</p> <p>14 he's been misleading to a point where when</p> <p>15 things do occur, I'm not aware of it. I have to</p> <p>16 go through -- go through my immediate supervisor</p> <p>17 asking questions in reference to find out what's</p> <p>18 going on. Overall I just think he's been very</p> <p>19 unfair to me as specifications of my rank, which</p> <p>20 is fire lieutenant.</p> <p>21 Q. Is there anything that you claim that Larry</p> <p>22 Langley did that prevented you from being</p> <p>23 promoted to battalion chief?</p>	<p>1 nutshell that if I underwent or continued my</p> <p>2 grievance that a red flag would be up against my</p> <p>3 name and people of the City would think that I'm</p> <p>4 not willing to comply with what they are doing</p> <p>5 and that basically I would have a hard time, you</p> <p>6 know, progressing working there whatsoever.</p> <p>7 Q. Well, assume all that is true. Is there</p> <p>8 anything that you know of that he did that kept</p> <p>9 you from being promoted to battalion chief in</p> <p>10 February or March or April of '06?</p> <p>11 A. I think he had something to do with allowing</p> <p>12 non-probationary personnel to be eligible to</p> <p>13 apply for that position, therefore making it</p> <p>14 more challenging for me to possibly attempt to</p> <p>15 obtain that position.</p> <p>16 Q. Well, first of all, in terms of that test, it</p> <p>17 didn't matter how many people applied. I mean,</p> <p>18 you were graded on what you made, right?</p> <p>19 MR. HORSLEY: Object to the form.</p> <p>20 Q. True? It didn't matter if a thousand people</p> <p>21 applied. You had to make 70?</p> <p>22 A. That was the rule.</p> <p>23 Q. So it didn't matter how many folks were in that</p>
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<p>1 A. Yes, sir.</p> <p>2 Q. What?</p> <p>3 A. Larry Langley sent me a memo -- I'm sorry. He</p> <p>4 didn't send me a memo. He responded to an</p> <p>5 e-mail I sent to him in reference to the posting</p> <p>6 of the training officer position that Lee Lamar</p> <p>7 filled. And in his memo, he stated that, if I</p> <p>8 can remember correctly, somehow or another he</p> <p>9 lost it in his computer and that it was posted</p> <p>10 and it was posted for some period of time and it</p> <p>11 was for team leaders only. And at the time I</p> <p>12 was a lieutenant.</p> <p>13 Q. And that was for training officer?</p> <p>14 A. That was for training officer.</p> <p>15 Q. Is there anything that Larry Langley did that</p> <p>16 you think prevented you from being promoted to</p> <p>17 battalion chief because of your race?</p> <p>18 A. I also recall an incident. If I'm thinking</p> <p>19 correctly, it was during the time I filed my</p> <p>20 grievance in 2005. Mr. Langley came to my house</p> <p>21 and delivered a letter from Mr. James, which I</p> <p>22 had addressed to him. And during that</p> <p>23 deliverance, we conversed, and he told me in a</p>	<p>1 room. You either were going to make 70 or not</p> <p>2 make 70, right?</p> <p>3 A. Right.</p> <p>4 Q. And the best I can tell, the only person who</p> <p>5 took that test that was a non-probationary</p> <p>6 career officer was Chris Turner, another black</p> <p>7 male. Are you complaining that Chris Turner</p> <p>8 should not have been allowed to take that test?</p> <p>9 A. I can't say -- I don't -- I'm not in a position</p> <p>10 to say what he can or can't take. But Chris</p> <p>11 Turner was allowed to take the test.</p> <p>12 Q. And he didn't make it, did he?</p> <p>13 A. No, sir, he did not.</p> <p>14 Q. And that didn't influence your grade one bit,</p> <p>15 did it?</p> <p>16 A. Not that I'm aware of, it didn't.</p> <p>17 Q. So can you agree with me that whether or not</p> <p>18 Larry Langley did or didn't allow</p> <p>19 non-probationary permanent employees to take the</p> <p>20 test doesn't affect your score one bit?</p> <p>21 A. I'm not aware if it did or not, sir.</p> <p>22 Q. So you can't think of any reason or anything</p> <p>23 that Larry Langley did to keep you from being</p>

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<p>1 promoted to battalion chief in April of '06, can</p> <p>2 you?</p> <p>3 A. I can't recall anything at this time, sir.</p> <p>4 Q. And what is it that Mr. Langley said or did that</p> <p>5 you think was not honest or misleading?</p> <p>6 A. Basically when he said that the training officer</p> <p>7 position was posted.</p> <p>8 Q. And what is it that you think he did or didn't</p> <p>9 do that was unfair to your position as a fire</p> <p>10 lieutenant?</p> <p>11 A. In the absence of a shift commander, captain, or</p> <p>12 battalion chief, I wasn't given the opportunity</p> <p>13 to fill those positions.</p> <p>14 Q. Is that the Horace Clanton deal?</p> <p>15 A. That's part of it, yes, sir.</p> <p>16 Q. What else besides Horace Clanton?</p> <p>17 A. There were several other times when things</p> <p>18 got -- things came about whereas when I applied</p> <p>19 for it, he wanted to -- he did whatever he</p> <p>20 deemed necessary to -- that made me think he was</p> <p>21 trying to prevent me from being a part of it.</p> <p>22 Q. Did any of those incidences occur after you</p> <p>23 complained about Horace Clanton?</p>	<p>1 HR?</p> <p>2 A. I'm not aware of anything, sir.</p> <p>3 Q. And you're not aware of any specifics that he</p> <p>4 did, are you?</p> <p>5 A. No, sir.</p> <p>6 Q. And then Bill James, what is it that you say</p> <p>7 Bill James did to keep you from being promoted</p> <p>8 because of your race or in retaliation?</p> <p>9 A. Other than the point of me speaking with him</p> <p>10 directly telling him there was a problem at the</p> <p>11 Auburn Fire Division, I'm not aware of what he</p> <p>12 knows or done or -- I don't know.</p> <p>13 Q. And my understanding is that when you spoke with</p> <p>14 him privately, you never said, hey, I'm being</p> <p>15 discriminated against in promotions because of</p> <p>16 my race, did you?</p> <p>17 A. I don't recall making that statement, sir.</p> <p>18 Q. And your conference with him was before you took</p> <p>19 the battalion chief test, wasn't it?</p> <p>20 A. Yes, sir. It was before they actually</p> <p>21 implemented the title change or the promotion</p> <p>22 for team leader to lieutenant.</p> <p>23 Q. And Charles M. Duggan, the city manager, have</p>
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<p>1 A. No, sir.</p> <p>2 Q. And what about Lee Lamar? What is it that Lee</p> <p>3 Lamar did in your opinion that kept you from</p> <p>4 being promoted because of your race or in</p> <p>5 retaliation?</p> <p>6 A. I don't recall. I'm not aware of anything at</p> <p>7 this time, sir.</p> <p>8 Q. And Bill Ham, Jr., what is it that he did that</p> <p>9 kept you from being promoted because of your</p> <p>10 race or in retaliation?</p> <p>11 A. I'm not aware of anything at this time, sir.</p> <p>12 Q. Have you ever spoken to Bill Ham, Jr. about any</p> <p>13 of this?</p> <p>14 A. No, sir.</p> <p>15 Q. And what is it that Steve Reeves did to keep you</p> <p>16 from being promoted because of your race or in</p> <p>17 retaliation?</p> <p>18 A. I don't know what role he could have played in</p> <p>19 any of this, but being he works in the human</p> <p>20 resource department, he had to play some role in</p> <p>21 it. He was present during all the orientation</p> <p>22 and the testing procedures.</p> <p>23 Q. Anything else other than the fact that he's in</p>	<p>1 you ever spoken to the city manager about any</p> <p>2 complaints you have about race discrimination or</p> <p>3 retaliation?</p> <p>4 A. No, sir.</p> <p>5 Q. Do you know of anything that Charles M. Duggan</p> <p>6 did to keep you from being promoted because of</p> <p>7 your race or in retaliation?</p> <p>8 A. No, sir, I'm not aware of anything he knows.</p> <p>9 Q. And then you've sued the City of Auburn. What</p> <p>10 is it you say the City of Auburn did to keep you</p> <p>11 from being promoted because of your race or in</p> <p>12 retaliation?</p> <p>13 A. Being that the City of Auburn is responsible for</p> <p>14 everything that has taken place throughout the</p> <p>15 history of the department, why no blacks or</p> <p>16 African-Americans have been hired or promoted</p> <p>17 since me or since Mr. Ogletree, I don't</p> <p>18 understand that. I'm very concerned about</p> <p>19 that. What's the reason for it? I just don't</p> <p>20 understand it.</p> <p>21 Q. Which occurred first? Were you promoted to</p> <p>22 lieutenant before or after Mr. Ogletree became a</p> <p>23 team leader?</p>

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<p>1 A. Approximately one month before he became a team</p> <p>2 leader.</p> <p>3 Q. You were promoted to lieutenant?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And he would have gone through the structured</p> <p>6 interview that you've talked about to become a</p> <p>7 team leader as far as you know?</p> <p>8 A. As far as I know, he went through a structured</p> <p>9 interview. How was it? Was it identical to</p> <p>10 previous times? I don't know.</p> <p>11 Q. Any other reason that you've sued the City of</p> <p>12 Auburn other than you just don't understand</p> <p>13 about the hiring and the promotion?</p> <p>14 MR. HORSLEY: Object to the form. You</p> <p>15 can answer.</p> <p>16 A. I'm not aware of anything at this time.</p> <p>17 Q. Let me ask you about your damages, how you claim</p> <p>18 you've been damaged. Do you know what I'm</p> <p>19 talking about?</p> <p>20 A. Yes, sir.</p> <p>21 Q. I assume we can just get through this quick. I</p> <p>22 assume that one way you claim you've been</p> <p>23 damaged is the difference in salary that you</p>	<p>1 A. No, sir.</p> <p>2 Q. -- before this or a psychiatrist or a</p> <p>3 psychologist?</p> <p>4 A. No, sir.</p> <p>5 Q. What is your claim for mental anguish and</p> <p>6 emotional distress? What is it that you claim?</p> <p>7 A. I've been -- For years, Mr. Morgan, I've been</p> <p>8 labeled as a problem by my immediate</p> <p>9 supervisors, and basically it has traveled from</p> <p>10 one shift to another to one shift commander to</p> <p>11 another to eventually up the chain to the point</p> <p>12 where when it actually got to the point of a</p> <p>13 hearing, it was pretty much all over the</p> <p>14 division, which, you know, challenged my skill</p> <p>15 as a leader amongst my men, just my overall</p> <p>16 character as a firefighter, officer, an</p> <p>17 employee, the whole nine, and being that it has</p> <p>18 been challenging at times for me to successfully</p> <p>19 and progressively manage my people and to</p> <p>20 conduct myself safely and to do my job in a</p> <p>21 manner in which I'm supposed to do it. I always</p> <p>22 felt like I was being watched. Any mistakes I</p> <p>23 make or anything that may happen that falls</p>
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<p>1 would have received as a battalion chief</p> <p>2 compared to what you're making now.</p> <p>3 A. Yes, sir.</p> <p>4 Q. I assume that --</p> <p>5 A. To the conclusion of my retirement, whenever I</p> <p>6 retire.</p> <p>7 Q. The difference in salary and ever how that</p> <p>8 impacts retirement benefits and whatever?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Then you've got a claim in here for emotional --</p> <p>11 I thought you did. I thought I had written in</p> <p>12 here emotional distress.</p> <p>13 (Brief off-the-record discussion.)</p> <p>14 Q. Are you claiming emotional distress or mental</p> <p>15 anguish?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Have you seen any professional mental health</p> <p>18 counselors, doctors, psychiatrists, or</p> <p>19 psychologists for any mental anguish or</p> <p>20 emotional distress which you claim as a result</p> <p>21 of not being promoted?</p> <p>22 A. No, sir.</p> <p>23 Q. Had you ever seen a mental health specialist --</p>	<p>1 under my responsibility, you know, I actually</p> <p>2 think if it happens that it will be held against</p> <p>3 me severely.</p> <p>4 Q. And how long have you had those feelings?</p> <p>5 A. Ever since I was promoted to lieutenant in</p> <p>6 1996. Back then a lot of people didn't think I</p> <p>7 deserved it. They thought I was promoted</p> <p>8 because I was black. They thought things that I</p> <p>9 never thought people that I trust and work with</p> <p>10 in the profession that I do would actually</p> <p>11 think. I applied for the position, I was</p> <p>12 eligible for the position, and I got the</p> <p>13 position, not because of my skin color but</p> <p>14 because I thought I was the best person for the</p> <p>15 job.</p> <p>16 Q. Well, do you claim you suffered any additional</p> <p>17 mental anguish or emotional distress as a result</p> <p>18 of not being promoted to the battalion chief or</p> <p>19 is it just something that's been going on since</p> <p>20 '96?</p> <p>21 A. That's adding to the problem overall. I mean,</p> <p>22 here I am the only lieutenant in the fire</p> <p>23 division, and then here comes title changes</p>

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<p>1 which pretty much put people on the level that</p> <p>2 I'm on. Now I've got to -- Where I had no one</p> <p>3 to compete with, now I've got to compete with</p> <p>4 thirteen other people for a position that I</p> <p>5 didn't even have to compete with anyone with.</p> <p>6 Why couldn't I have been appointed like some of</p> <p>7 these other people that have been appointed</p> <p>8 through the years? Why couldn't I have</p> <p>9 undergone a structured interview? Why I got to</p> <p>10 go take a test and make a cutoff score to be</p> <p>11 eligible for a position when at that particular</p> <p>12 time or at a particular time, I was the only</p> <p>13 fire lieutenant in the whole fire division? So</p> <p>14 that concerns me severely.</p> <p>15 Q. Well, how does this mental anguish or emotional</p> <p>16 distress manifest itself? How does it affect</p> <p>17 you? Are you not able to do your job?</p> <p>18 A. Doing my job is very challenging. Rarely do I</p> <p>19 sleep at night when I'm on shift because I don't</p> <p>20 know what could happen. I've got people that</p> <p>21 live in the stations. I've got people that have</p> <p>22 access to the stations. I'm just at a point now</p> <p>23 where there's not too many people I trust at the</p>	<p>1 interview. But according to the paperwork or</p> <p>2 the information that was forwarded to me, he was</p> <p>3 appointed as deputy chief.</p> <p>4 Q. Well, did he have a structured interview as</p> <p>5 part of -- to be deputy chief?</p> <p>6 A. Yes, sir. There was a structured interview that</p> <p>7 I also attended.</p> <p>8 Q. And you applied for that position?</p> <p>9 A. Yes, sir.</p> <p>10 Q. So you know there was some process by which he</p> <p>11 was selected?</p> <p>12 A. For the deputy chief, it was.</p> <p>13 Q. But you're saying for training officer?</p> <p>14 A. Training officer ...</p> <p>15 Q. And how long ago was that?</p> <p>16 A. I don't remember the date. 2003 or 2004, one of</p> <p>17 those.</p> <p>18 Q. Anybody else that you claim was appointed other</p> <p>19 than Lee Lamar, training officer?</p> <p>20 A. Terry Walker, he was appointed.</p> <p>21 Q. And what was he appointed to?</p> <p>22 A. Training chief. Training officer.</p> <p>23 Q. Do you want to be training officer? Would you</p>
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<p>1 Auburn Fire Division.</p> <p>2 Q. And is that because of this battalion chief</p> <p>3 promotion?</p> <p>4 A. Because of everything that I've dealt with,</p> <p>5 Mr. Morgan, to include the battalion chief</p> <p>6 promotion.</p> <p>7 Q. But you haven't seen any professionals?</p> <p>8 A. No, sir, I have not seen any professionals.</p> <p>9 Q. Do they have some counseling program that's</p> <p>10 available to the employees of the City of</p> <p>11 Auburn?</p> <p>12 A. I'm quite sure they have some type of program,</p> <p>13 yes.</p> <p>14 Q. Have you done anything in that regard?</p> <p>15 A. No, sir, I have not done anything yet.</p> <p>16 Q. And I know you've told me this, and I</p> <p>17 apologize. I'm really not trying to belabor</p> <p>18 this. Who is it that you say was appointed, Lee</p> <p>19 Lamar? Who was appointed to a position?</p> <p>20 A. Apparently Lee Lamar was because I don't recall</p> <p>21 him going through an interview. I don't recall</p> <p>22 the position being posted. The deputy chief</p> <p>23 position, which he got, it was a structured</p>	<p>1 have given up your position as lieutenant to</p> <p>2 be --</p> <p>3 A. I applied for the position, but today I can't --</p> <p>4 I can't say what I would do without talking with</p> <p>5 my attorney and discussing it further.</p> <p>6 Q. When did you apply for the position of training</p> <p>7 officer?</p> <p>8 A. I don't remember the date, Mr. Morgan.</p> <p>9 Q. Who got it?</p> <p>10 A. Terry Walker got it.</p> <p>11 Q. So when Terry Walker was appointed, there was a</p> <p>12 process in which you participated?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And he was selected?</p> <p>15 A. And understand, Mr. Morgan, there was no test.</p> <p>16 There was no written test. When John Lankford</p> <p>17 got the training officer position, there was no</p> <p>18 test.</p> <p>19 Q. Are you complaining there should have been a</p> <p>20 test or shouldn't have been a test?</p> <p>21 A. I was made to take a test for battalion chief.</p> <p>22 Q. Well, so was everybody else that was promoted in</p> <p>23 April of '06, weren't they?</p>

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<p>1 A. But nobody between --</p> <p>2 Q. Didn't everybody that applied for battalion</p> <p>3 chief in February and March of '06 have to take</p> <p>4 a written test?</p> <p>5 A. Yes, sir.</p> <p>6 Q. So Terry Walker and Lee Lamar. Anybody else you</p> <p>7 claim was appointed?</p> <p>8 A. John Lankford.</p> <p>9 Q. And what was he appointed to?</p> <p>10 A. Training officer.</p> <p>11 Q. Was that before or after Lee Lamar?</p> <p>12 A. That was after Lee Lamar.</p> <p>13 Q. Did you apply before then?</p> <p>14 A. No, sir.</p> <p>15 Q. Did anybody apply for it then?</p> <p>16 A. I'm not aware of who applied for it.</p> <p>17 Q. Lee Lamar, John Lankford, and Terry Walker.</p> <p>18 Anyone else that was appointed?</p> <p>19 A. I look -- Overall I look at the title changes as</p> <p>20 a promotion.</p> <p>21 Q. The title changes?</p> <p>22 A. Yes, sir. From captain to battalion chief, from</p> <p>23 team leader to lieutenants, I look at that as a</p>	<p>1 should be team leaders.</p> <p>2 Q. Should not be a lieutenant?</p> <p>3 A. No, sir.</p> <p>4 Q. And should not have been eligible to apply for</p> <p>5 battalion chief?</p> <p>6 MR. HORSLEY: Object to the form.</p> <p>7 A. No, sir.</p> <p>8 Q. I mean, that's your position? They should not</p> <p>9 have been eligible to apply for battalion chief;</p> <p>10 is that true?</p> <p>11 MR. HORSLEY: Object to the form. You</p> <p>12 can answer.</p> <p>13 A. Yes, that's true.</p> <p>14 Q. I want to try to get a grasp on this mental</p> <p>15 anguish, emotional distress. I know you haven't</p> <p>16 seen any professionals. Specifically as to not</p> <p>17 being promoted to battalion chief, how has that</p> <p>18 affected you?</p> <p>19 A. Can you be more specific on that question,</p> <p>20 please, sir?</p> <p>21 Q. I wish I could. I mean, do you not want to go</p> <p>22 to work? You can't sleep? What is it?</p> <p>23 A. I'm very displeased at work, very.</p>
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<p>1 promotion.</p> <p>2 Q. You think that's a promotion?</p> <p>3 A. Yes, sir.</p> <p>4 Q. But you know that's not true?</p> <p>5 MR. HORSLEY: Object to the form.</p> <p>6 A. Well, the thing is is that when -- captains,</p> <p>7 prior to them going to battalion chief, they</p> <p>8 had, I think it was, two bugles as far as their</p> <p>9 brass. They went to three. Team leaders had</p> <p>10 collar insignia, and they went to bugles. I</p> <p>11 wear bugles, and I know what I had to do to get</p> <p>12 my bugles.</p> <p>13 Q. So you're saying Eddie Ogletree should not be a</p> <p>14 lieutenant?</p> <p>15 MR. HORSLEY: Object to the form.</p> <p>16 A. I'm not saying --</p> <p>17 Q. I'm asking you. Are you saying Eddie Ogletree</p> <p>18 should not be a lieutenant?</p> <p>19 MR. HORSLEY: Object to the form.</p> <p>20 Q. It's a simple question.</p> <p>21 MR. HORSLEY: You can answer.</p> <p>22 A. As far as I'm concerned, Eddie Ogletree and all</p> <p>23 other thirteen people who signed that paper</p>	<p>1 Q. But you've not discussed -- How about your</p> <p>2 family doctor? Did you discuss it with your</p> <p>3 family doctor?</p> <p>4 A. No, sir.</p> <p>5 Q. Who is your family doctor?</p> <p>6 A. Dr. Kevin L. Jackson. That's my medical doctor.</p> <p>7 Q. And where is he located?</p> <p>8 A. Auburn, Alabama.</p> <p>9 Q. You've got a loss wage claim based on the</p> <p>10 difference in the positions. You have a claim</p> <p>11 for mental anguish and emotional distress. Any</p> <p>12 other way you claim you've been damaged by not</p> <p>13 being promoted to battalion chief because of</p> <p>14 your race or in retaliation?</p> <p>15 A. Directly speaking, the opportunity to advance.</p> <p>16 I've always had a goal to be somewhere within</p> <p>17 the Auburn --</p> <p>18 MR. HORSLEY: He's just asking you if</p> <p>19 there's any other category of</p> <p>20 damages that you're claiming other</p> <p>21 than wages and mental anguish and</p> <p>22 emotional distress. That's what</p> <p>23 he's asking.</p>



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<p>1 A. I can't think of nothing else at this time, sir.</p> <p>2 Q. Loss wages and emotional distress.</p> <p>3 And then this opportunity to advance, what</p> <p>4 do you mean by that?</p> <p>5 A. Career advancement, move up, be promoted.</p> <p>6 Q. Can't move up because you didn't get that</p> <p>7 promotion. Okay.</p> <p>8 Any other damages you claim? I want -- I'm</p> <p>9 not -- I want to know anything that you claim as</p> <p>10 a damage. I've got your wages, I've got your</p> <p>11 emotional distress, and I've got your</p> <p>12 opportunity to advance. Are there any other</p> <p>13 damages that you claim in this lawsuit?</p> <p>14 MR. HORSLEY: You're not asking</p> <p>15 punitives obviously?</p> <p>16 MR. MORGAN: I'm not talking about</p> <p>17 punitives.</p> <p>18 A. I think that pretty much touches bases.</p> <p>19 Q. I am going to ask you this one question about</p> <p>20 punitives.</p> <p>21 Do you claim that any of these people that</p> <p>22 you've sued -- Larry Langley, Lee Lamar, Bill</p> <p>23 Ham, Steven Reeves, Bill James, Charles</p>	<p>1 took an EMT course. I can't remember when it</p> <p>2 was, but it was right during the time when the</p> <p>3 local colleges and junior colleges were</p> <p>4 implementing the change from quarterly to</p> <p>5 semesters. Took the EMT course. Made the</p> <p>6 grade. Submitted all the paperwork. Told my</p> <p>7 immediate supervisors in reference to tuition</p> <p>8 reimbursement and all that. Met all</p> <p>9 requirements but never was reimbursed.</p> <p>10 During those times when I took those -- that</p> <p>11 course -- it was approximately nine weeks or a</p> <p>12 quarter long -- I had to get people to work for</p> <p>13 me. I think somewhere in the education program</p> <p>14 of the City, it states they allow you to take</p> <p>15 time off to take these courses as long as you</p> <p>16 make them up. I work a 24-hour shift. I work a</p> <p>17 little bit different than other people in the</p> <p>18 City; therefore, I couldn't necessarily do</p> <p>19 that. But I was allowed to swap or get people</p> <p>20 to cover for me so I could attend these courses</p> <p>21 or whatever courses that I decided to take.</p> <p>22 MR. MORGAN: That's all I've got,</p> <p>23 Richard.</p>
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<p>1 Duggan -- do you think they deliberately and</p> <p>2 intentionally kept you from being promoted?</p> <p>3 MR. HORSLEY: Object to the form.</p> <p>4 A. I don't have any comment about that right this</p> <p>5 time, Mr. Morgan.</p> <p>6 MR. MORGAN: Give me two minutes, and</p> <p>7 I may be through.</p> <p>8 (Brief recess was taken.)</p> <p>9 Q. (Continuing by Mr. Morgan) Mr. Stephens, are</p> <p>10 you familiar with the City's educational</p> <p>11 assistance plan -- do you know what that is --</p> <p>12 or program?</p> <p>13 A. I'm somewhat familiar with it. It's been a long</p> <p>14 time since I seen that, sir.</p> <p>15 Q. Have you taken advantage of that opportunity to</p> <p>16 complete your college education or school?</p> <p>17 A. I have. In my career I have taken advantage of</p> <p>18 it.</p> <p>19 Q. Tell me what you've done in terms of educational</p> <p>20 assistance.</p> <p>21 A. I have taken classes -- Everything pretty much</p> <p>22 in my latter years I took was in reference to my</p> <p>23 career with the Auburn Fire Division. And I</p>	<p>1 MR. HORSLEY: I've got a few.</p> <p>2 EXAMINATION</p> <p>3 BY MR. HORSLEY:</p> <p>4 Q. Gerald, either in layman's terms or in legal</p> <p>5 terms, do you truly understand the meaning of</p> <p>6 the term "disparate impact"?</p> <p>7 A. No, sir.</p> <p>8 Q. You got a lot of questions about disparate</p> <p>9 impact and what you're claiming in the lawsuit</p> <p>10 as it relates to disparate impact. My question</p> <p>11 is: Do you have an understanding as to what you</p> <p>12 are ultimately claiming in this lawsuit,</p> <p>13 claiming happened to you?</p> <p>14 A. Yes, sir, I kind of understand.</p> <p>15 Q. What are you claiming happened to you in this</p> <p>16 lawsuit?</p> <p>17 A. I'm claiming that basically because I'm a black</p> <p>18 man employed with the City, I was discriminated</p> <p>19 against.</p> <p>20 Q. Are you claiming that with regard to the 2006</p> <p>21 battalion chief promotion?</p> <p>22 A. Yes, sir. That's a part of it.</p> <p>23 Q. You were also asked a lot of questions about</p>



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<p>1 evidence, and I think evidence is probably a</p> <p>2 legal term also. Can you give us examples of</p> <p>3 how you were denied that promotion or</p> <p>4 discriminated against because of your race by</p> <p>5 the City of Auburn?</p> <p>6 MR. MORGAN: Object to the form.</p> <p>7 Q. You can answer.</p> <p>8 A. There was a lot of implementations that took</p> <p>9 place during the time when I was eligible for</p> <p>10 several positions, and it was something that was</p> <p>11 not practiced through those years. They gave a</p> <p>12 test, which, you know, for whatever reason they</p> <p>13 he gave it, they did it.</p> <p>14 Q. The test we've talked about for the battalion</p> <p>15 chief promotion?</p> <p>16 A. Yes.</p> <p>17 Q. What else?</p> <p>18 A. They made temporary assignments, and I think</p> <p>19 they never considered me for those assignments.</p> <p>20 They haven't promoted any blacks of the ones</p> <p>21 that was available that works there.</p> <p>22 Q. What are your thoughts about the seniority and</p> <p>23 experience level of the people that were</p>	<p>1 ultimately claiming you were denied that</p> <p>2 promotion?</p> <p>3 MR. MORGAN: Object to the form.</p> <p>4 A. Basically because I'm black.</p> <p>5 Q. How does that affect you from an emotional</p> <p>6 standpoint?</p> <p>7 MR. MORGAN: Object to the form.</p> <p>8 A. Can I answer?</p> <p>9 Q. Yes, you can answer.</p> <p>10 A. Being judged because I'm a black man, that</p> <p>11 really bothers me a whole lot because I have</p> <p>12 applied myself. I've done everything that I can</p> <p>13 possibly do or everything they've asked me to do</p> <p>14 to obtain this position and have held it -- any</p> <p>15 position that I've applied and received and held</p> <p>16 it as long as of today. There are just things</p> <p>17 that happened to me that I think didn't happen</p> <p>18 to other people; therefore, it leads me to think</p> <p>19 that, along with other things that take place.</p> <p>20 Q. How does that make you feel?</p> <p>21 MR. MORGAN: Object to the form.</p> <p>22 A. It basically just makes me feel like, you know,</p> <p>23 people don't trust me or whatever the case may</p>
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<p>1 promoted in front of you as it relates to racial</p> <p>2 discrimination?</p> <p>3 MR. MORGAN: Object to the form.</p> <p>4 Q. Go ahead.</p> <p>5 A. I think I was more qualified than these guys</p> <p>6 were. I had more seniority. I was more</p> <p>7 experienced. I just directly speaking think I</p> <p>8 was more qualified.</p> <p>9 Q. Why do you think -- Again, from a layman's</p> <p>10 standpoint, why do you believe the City</p> <p>11 implemented the test for this promotion?</p> <p>12 MR. MORGAN: Object to the form.</p> <p>13 Q. You can answer.</p> <p>14 A. Basically because I'm black and I was applying</p> <p>15 for the position.</p> <p>16 Q. Were other blacks applying for the position</p> <p>17 also?</p> <p>18 A. Other blacks were applying for the position as</p> <p>19 well.</p> <p>20 Q. Y'all spoke some about damages, and Randall</p> <p>21 asked you questions about mental anguish and</p> <p>22 emotional distress related to the denial of the</p> <p>23 promotion. Again, what is the reason you are</p>	<p>1 be and that they are going to give me a hard</p> <p>2 time at work and just make it very challenging</p> <p>3 for me when I'm working there.</p> <p>4 Q. He asked you about the individual defendants and</p> <p>5 what evidence you have that they had acted</p> <p>6 deliberately and intentionally. Who do you</p> <p>7 understand made the decisions to implement a</p> <p>8 test for the battalion chief promotion?</p> <p>9 MR. MORGAN: Object to the form.</p> <p>10 Q. Go ahead.</p> <p>11 A. All the persons that are named on the</p> <p>12 paperwork. Now, I think they played a major</p> <p>13 role of some part or another in reference to</p> <p>14 what took place.</p> <p>15 Q. Who made the decisions to make the title changes</p> <p>16 from team leader to lieutenant?</p> <p>17 A. As far as I'm concerned, those names that was</p> <p>18 mentioned on the paperwork.</p> <p>19 Q. As far as you know, who made the decision to</p> <p>20 make the title change from captain to battalion</p> <p>21 chief?</p> <p>22 A. As far as I'm concerned, those people again</p> <p>23 whose name is on the paperwork.</p>

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<p>1 MR. HORSLEY: That's all I have.</p> <p>2 EXAMINATION</p> <p>3 BY MR. MORGAN:</p> <p>4 Q. Mr. Stephens, was there anything on the test you</p> <p>5 took, the booklet, that you turned in to be</p> <p>6 graded that identified you as a black male?</p> <p>7 A. Identified me as a black male?</p> <p>8 Q. Anything that would tell the person that was</p> <p>9 grading that paper, hey, this is a black male.</p> <p>10 A. I'm not aware if anything was.</p> <p>11 Q. You didn't put Gerald Stephens, black male, did</p> <p>12 you?</p> <p>13 A. No, sir.</p> <p>14 Q. You didn't put Gerald Stephens,</p> <p>15 African-American, did you?</p> <p>16 A. No, sir.</p> <p>17 Q. You just put your name or your -- ever what that</p> <p>18 identification --</p> <p>19 A. Yes, sir.</p> <p>20 Q. So whoever graded your paper didn't know what</p> <p>21 your race was, did they?</p> <p>22 A. I'm not aware if they knew anything or not,</p> <p>23 Mr. Morgan.</p>	<p>1 Q. Is that your position?</p> <p>2 MR. HORSLEY: Mischaracterization of</p> <p>3 testimony.</p> <p>4 A. I think seniority is a main part in the job I do</p> <p>5 and the job that the other firefighters do,</p> <p>6 which leads to the length of time on the job,</p> <p>7 knowing the job, being experienced doing the</p> <p>8 job. I don't think it should be based upon</p> <p>9 whether you pass or fail a test.</p> <p>10 Q. You don't? You don't think --</p> <p>11 A. A written test. No, sir, I don't.</p> <p>12 Q. You don't think a test that's designed to test</p> <p>13 your qualifications, your skill, knowledge of</p> <p>14 the job is more important than just having been</p> <p>15 on the payroll longer than somebody else?</p> <p>16 MR. HORSLEY: Object to the form.</p> <p>17 Q. That's your testimony?</p> <p>18 MR. HORSLEY: Object to the form.</p> <p>19 That's not his testimony.</p> <p>20 A. I don't necessarily look at it as being on the</p> <p>21 payroll, Mr. Morgan. I look at it as basically</p> <p>22 being on the job, learning the job, doing the</p> <p>23 job, training those who, you know, just may turn</p>
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<p>1 Q. This temporary assignment, I want to be clear</p> <p>2 because I thought we had been through all this.</p> <p>3 The last temporary assignment about which you</p> <p>4 complained you didn't get was the one involving</p> <p>5 Horace Clanton that you filed an EEOC charge</p> <p>6 about, wasn't it?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And your thoughts on seniority and experience,</p> <p>9 that's why you think you're more qualified than</p> <p>10 the people who became battalion chiefs, true?</p> <p>11 A. Yes, sir. To include time on the job, time in</p> <p>12 grade, all that.</p> <p>13 Q. Seniority.</p> <p>14 A. Yes, sir.</p> <p>15 Q. So you think promotions should be based on</p> <p>16 seniority?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Not qualifications, not who can do the best job,</p> <p>19 simply I've been sitting in this job for the</p> <p>20 longest of anybody else; therefore, I need to be</p> <p>21 promoted?</p> <p>22 MR. HORSLEY: Object to the form.</p> <p>23 That's not --</p>	<p>1 around and be your supervisors one day, you</p> <p>2 know. It takes time to be in that position</p> <p>3 that -- you know, what was being tested for, and</p> <p>4 I don't think a cutoff score of no nature should</p> <p>5 be involved. That's just what I think.</p> <p>6 Q. So you think that it's just strictly seniority</p> <p>7 is all that --</p> <p>8 MR. HORSLEY: Object to the form.</p> <p>9 That's not what he said.</p> <p>10 MR. MORGAN: That's exactly what he's</p> <p>11 saying.</p> <p>12 MR. HORSLEY: That's exactly not what</p> <p>13 he's saying. He just said --</p> <p>14 MR. MORGAN: Well, I'm going to ask</p> <p>15 him this.</p> <p>16 Q. Do you think strictly seniority is what you</p> <p>17 should go by?</p> <p>18 A. No, sir.</p> <p>19 Q. Then what other qualifications are there?</p> <p>20 A. Seniority, experience, time on the job.</p> <p>21 Q. Experience. How do you define experience?</p> <p>22 A. How long you've been working there.</p> <p>23 Q. Seniority?</p>

<p style="text-align: right;">Page 246</p> <p>1 A. Yes. It falls under that category, yes, sir.</p> <p>2 Q. Time in the grade. Time on the job. That's</p> <p>3 seniority?</p> <p>4 A. Knowledge of the job, yes, sir. Training.</p> <p>5 Q. Back up.</p> <p>6 Knowledge of the job?</p> <p>7 A. Yes, sir.</p> <p>8 Q. How do you test knowledge of the job?</p> <p>9 A. I'm not in a position to justify how they go</p> <p>10 about testing that.</p> <p>11 Q. Do you agree that before someone should be</p> <p>12 promoted that you should test their knowledge of</p> <p>13 the job?</p> <p>14 MR. HORSLEY: Object to the form. Go</p> <p>15 ahead.</p> <p>16 Q. Shouldn't you test --</p> <p>17 A. I agree that testing procedures should be</p> <p>18 consistent whether a written test is involved or</p> <p>19 not.</p> <p>20 Q. That's not my question. My question is: Before</p> <p>21 a person is promoted, should knowledge of the</p> <p>22 job be tested?</p> <p>23 MR. HORSLEY: Object to the form.</p>	<p style="text-align: right;">Page 248</p> <p>1 that contention?</p> <p>2 MR. HORSLEY: Asked and answered, but</p> <p>3 go ahead and answer it again.</p> <p>4 A. Over a time span of ten years, I have not seen a</p> <p>5 black man or woman or African-American hired or</p> <p>6 promoted.</p> <p>7 Q. Under any procedure? Under any procedure? Is</p> <p>8 that your testimony?</p> <p>9 A. Under any procedure what?</p> <p>10 Q. Whether it was a written test or not written</p> <p>11 test?</p> <p>12 A. No, I haven't.</p> <p>13 Q. Well, then, what is there? What facts, what</p> <p>14 evidence, hearsay, anything, would make you say</p> <p>15 the City implemented a written test to</p> <p>16 discriminate against you on the basis of your</p> <p>17 race?</p> <p>18 MR. HORSLEY: Asked and answered. Go</p> <p>19 ahead.</p> <p>20 A. Basically nobody never been hired or promoted.</p> <p>21 That's it.</p> <p>22 Q. That's it?</p> <p>23 A. Yes, sir.</p>
<p style="text-align: right;">Page 247</p> <p>1 A. I don't have any comments at this time.</p> <p>2 Q. You don't have a comment on whether or not you</p> <p>3 ought to test somebody's knowledge of the job?</p> <p>4 A. Well, you know, apparently not.</p> <p>5 Q. But you do have a comment that based on</p> <p>6 seniority you ought to be promoted?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Would you have been promoted to lieutenant if</p> <p>9 the City had used seniority as the guide stick</p> <p>10 back in 1996? Did you have the most seniority</p> <p>11 of anybody that applied to be a lieutenant or</p> <p>12 was eligible to be a lieutenant in 1996?</p> <p>13 A. Not in 1996.</p> <p>14 Q. You wouldn't have been promoted.</p> <p>15 A. Not in 1996.</p> <p>16 Q. And do you have -- I don't care if you want to</p> <p>17 call it, evidence, hearsay, knowledge --</p> <p>18 anything that you say that supports your</p> <p>19 contention that the City implemented a written</p> <p>20 test to discriminate against black applicants on</p> <p>21 the basis of their race? Anything? Anybody</p> <p>22 ever said anything, any hearsay, anything you've</p> <p>23 seen, any documents, anything that would support</p>	<p style="text-align: right;">Page 249</p> <p>1 MR. MORGAN: That's it.</p> <p>2 (Deposition concluded at</p> <p>3 approximately 4:00 p.m.)</p> <p>4 *****</p> <p>5 FURTHER DEPONENT SAITH NOT</p> <p>6 *****</p> <p>7</p> <p>8 REPORTER'S CERTIFICATE</p> <p>9</p> <p>10 STATE OF ALABAMA:</p> <p>11 MONTGOMERY COUNTY:</p> <p>12 I, Pamela A. Wilbanks, CCR, Registered</p> <p>13 Professional Reporter, and Commissioner for the State</p> <p>14 of Alabama at Large, do hereby certify that I reported</p> <p>15 the deposition of:</p> <p>16</p> <p>17 GERALD STEPHENS</p> <p>18 who was first duly sworn by me to speak the truth, the</p> <p>19 whole truth and nothing but the truth, in the matter</p> <p>20 of:</p> <p>21 EDDIE OGLETREE, an individual,</p> <p>22 GERALD STEPHENS, an</p> <p>23 individual,</p> <p>Plaintiffs,</p> <p>Vs.</p>

Deposition of Gerald Stephens

May 30, 2008

<p style="text-align: right;">Page 250</p> <p>1 In The State of Alabama, LARRY 2 LANGLEY, and individual, LEE LAMAR, 3 an individual, BILL HAM, JR., an 4 individual, STEVEN A. REEVES, an 5 individual, BILL JAMES, an 6 individual, CHARLES M. DUGGAN, an 7 individual, and CORTEZ LAWRENCE, 8 an individual, 9 Defendants. 10 In The U.S. District Court 11 For the Middle District of Alabama 12 Eastern Division 13 3:07-CV-867-WKW 14 on Friday, May 30, 2008. 15 The foregoing 249 computer printed pages 16 contain a true and correct transcript of the 17 examination of said witness by counsel for the parties 18 set out herein. The reading and signing of same is 19 hereby waived. 20 I further certify that I am neither of kin nor 21 of counsel to the parties to said cause nor in any 22 manner interested in the results thereof. 23 This 13th day of June 2008.</p>	
<p style="text-align: right;">Page 251</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p> <p>Pamela A. Wilbanks, ACCR #334 Expiration Date: 9-30-2008 Registered Professional Reporter and Commissioner for the State of Alabama at Large</p>	

**DEPOSITION OF LARRY M. LANGLEY**

**July 30, 2008**

**Pages 1 through 31**

**PREPARED BY:**

**Haislip, Ragan, Green, Starkie & Watson, P.C.**

**566 South Perry Street**

**Post Office Box 62**

**Montgomery, AL 36104**

**Phone: (334) 263-4455**

**Fax: (334) 263-9167**

**E-mail: [haislipragan@charter.net](mailto:haislipragan@charter.net)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

EDDIE OGLETREE, an individual,  
GERALD STEPHENS, an  
individual,

Plaintiffs,

Vs.

CIVIL ACTION NO.  
3:07-CV-867-WKW

CITY OF AUBURN, a municipality  
in the State of Alabama, LARRY  
LANGLEY, an individual, LEE LAMAR,  
an individual, BILL HAM, JR., an  
individual, STEVEN A. REEVES, an  
individual, BILL JAMES, an  
individual, CHARLES M. DUGGAN, an  
individual, and CORTEZ LAWRENCE,  
an individual,

Defendants.

\* \* \* \* \*

DEPOSITION OF LARRY M. LANGLEY, taken pursuant  
to stipulation and agreement before Pamela A. Wilbanks,  
Certified Court Reporter, ACCR# 391, Registered  
Professional Reporter and Commissioner for the State of  
Alabama at Large, in the Conference Room of Auburn City  
Hall, 144 Tichenor Avenue, Auburn, Alabama, on  
Wednesday, July 30, 2008, commencing at approximately  
2:20 p.m.



Page 2	Page 4
<p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 Mr. Richard F. Horsley</p> <p>4 KING, HORSLEY &amp; LYONS</p> <p>5 Attorneys at Law</p> <p>6 1 Metroplex Drive</p> <p>7 Suite 280</p> <p>8 Birmingham, AL 35209</p> <p>9 FOR THE DEFENDANT:</p> <p>10 Mr. Randall Morgan</p> <p>11 HILL, HILL, CARTER, FRANCO, COLE &amp; BLACK</p> <p>12 Attorneys at Law</p> <p>13 425 South Perry Street</p> <p>14 Montgomery, Alabama</p> <p>15 ALSO PRESENT:</p> <p>16 Mr. D'Arcy Wernette</p> <p>17 Mr. Steven Reeves</p> <p>18 Mr. Bill James</p> <p>19 Mr. Lee Lamar</p> <p>20 Mr. Eddie Ogletree</p> <p>21 Mr. Gerald Stephens</p> <p>22 *****</p> <p>23 EXAMINATION INDEX</p> <p>BY MR. HORSLEY ..... 4</p> <p>BY MR. MORGAN ..... 27</p> <p>*****</p> <p>PLAINTIFFS' EXHIBIT INDEX</p> <p>17 5/4/06 grievance letter to Mr. Langley from 21</p> <p>Mr. Clanton, Mr. Hodge, Mr. Ogletree and</p> <p>Mr. Stephens</p> <p>18 Mr. Langley's letter to Mr. Stephens in 21</p> <p>response to PX-17</p>	<p>1 signature of the witness to this deposition is hereby</p> <p>2 not waived.</p> <p>3 *****</p> <p>4 LARRY M. LANGLEY</p> <p>5 The witness, after having first been duly</p> <p>6 sworn to speak the truth, the whole truth and nothing</p> <p>7 but the truth testified as follows:</p> <p>8 EXAMINATION</p> <p>9 BY MR. HORSLEY:</p> <p>10 Q. Please tell us your full name.</p> <p>11 A. Larry Michael Langley.</p> <p>12 Q. My name is Richard Horsley. The same thing.</p> <p>13 I'm going to ask you questions. And if you</p> <p>14 don't understand, tell me to repeat. I'm going</p> <p>15 to assume you understood and gave the answer you</p> <p>16 intended to give once you answer. Okay?</p> <p>17 A. Okay.</p> <p>18 Q. Where do you currently reside?</p> <p>19 A. 81 Lee Road 374, Valley, Alabama 36854.</p> <p>20 Q. And you're retired from the Auburn Fire</p> <p>21 Department; is that correct?</p> <p>22 A. Right.</p> <p>23 Q. When did you retire?</p>
Page 3	Page 5
<p>1 STIPULATION</p> <p>2 It is hereby stipulated and agreed by and</p> <p>3 between counsel representing the parties that the</p> <p>4 deposition of LARRY M. LANGLEY is taken pursuant to the</p> <p>5 Alabama Rules of Civil Procedure and that said</p> <p>6 deposition may be taken before Pamela A. Wilbanks,</p> <p>7 Registered Professional Reporter and Commissioner for</p> <p>8 the State of Alabama at Large, without the formality of</p> <p>9 a commission, that objections to questions other than</p> <p>10 objections as to the form of the question need not be</p> <p>11 made at this time but may be reserved for a ruling at</p> <p>12 such time as the said deposition may be offered in</p> <p>13 evidence or used for any other purpose by either party</p> <p>14 provided for by the Statute.</p> <p>15 It is further stipulated and agreed by and</p> <p>16 between counsel representing the parties in this case</p> <p>17 that the filing of said deposition is hereby waived and</p> <p>18 may be introduced at the trial of this case or used in</p> <p>19 any other manner by either party hereto provided for by</p> <p>20 the Statute regardless of the waiving of the filing of</p> <p>21 the same.</p> <p>22 It is further stipulated and agreed by and</p> <p>23 between the parties hereto and the witness that the</p>	<p>1 A. November 30, 2007.</p> <p>2 Q. 2007?</p> <p>3 A. Uh-huh (positive response).</p> <p>4 MR. MORGAN: Yes. You need to make</p> <p>5 an audible answer.</p> <p>6 Q. Yeah. I'm sorry.</p> <p>7 MR. MORGAN: You need to say "yes" or</p> <p>8 "no". Don't say "uh-huh".</p> <p>9 Q. Say "yes" or "no" rather than "uh-huh" or</p> <p>10 "huh-uh" because she can't take that down.</p> <p>11 So you retired in November 2007?</p> <p>12 A. Yes.</p> <p>13 Q. And what was the reason for your retirement?</p> <p>14 A. I had 30 years in with the City.</p> <p>15 Q. Just ready to retire?</p> <p>16 A. Ready to retire.</p> <p>17 Q. How long were you the fire chief for the City of</p> <p>18 Auburn?</p> <p>19 A. Acting chief and deputy of public safety</p> <p>20 director a little over ten years.</p> <p>21 Q. Deputy public safety director, tell me what that</p> <p>22 is.</p> <p>23 A. Our public safety director -- in I think it was</p>

Page 6	Page 8
<p>1 '02 or '03 -- changed our title from police 2 chief and fire chief and the building code 3 official and communications director to deputy 4 public safety director over police operations or 5 fire operations. It was just a name change. 6 Q. So if I call it fire chief, it's the same thing? 7 A. Same thing. 8 Q. You were the fire chief for about ten years? 9 A. Yeah. 10 Q. And what job did you hold immediately before you 11 became the fire chief? 12 A. I was a battalion chief or shift commander. 13 Q. What year were you promoted to fire chief? 14 A. July of '97. 15 Q. And before that you were a shift commander, and 16 then are you saying that position was changed to 17 battalion chief? 18 A. Later in 2005 -- '04. Whenever we're talking 19 about, it was changed. I just said battalion 20 chief because it's -- 21 Q. But you were already the chief at the time that 22 it was changed to battalion chief? 23 A. Right.</p>	<p>1 Q. We've talked a little bit today about the job 2 classification or changes from shift commander 3 to battalion chief and from team leader to 4 lieutenant. I'm assuming as a fire chief, 5 you're familiar with the insignia that the 6 firemen wear on their uniforms; is that correct? 7 A. Right. 8 Q. What's the difference between the insignia that 9 a shift commander and a battalion chief wore? 10 A. The shift commander at that time -- Well, we was 11 captain/shift commanders, and it was two bars. 12 That's standard in the industry, two bars. Two 13 bugles. 14 Q. And then when -- 15 A. And then when the name changed to battalion 16 chief, the recognized insignia for that is the 17 three bugles. 18 Q. Would three bugles as opposed to two bugles not 19 signify a promotion in rank within the 20 department? 21 MR. MORGAN: Object to the form. 22 A. Not in this department, no. 23 Q. Are you saying that it would in some</p>
Page 7	Page 9
<p>1 Q. So before you were chief, you actually were a 2 shift commander? 3 A. Yeah. 4 Q. And for how long were you a shift commander? 5 A. About a year and a half. 6 Q. What process did you go through to be promoted 7 to chief from shift commander? 8 A. I didn't go through a process. The current 9 chief resigned and went to Phenix City. 10 Q. What was his name? 11 A. Ronnie Blankenship. And I was asked by the 12 current public safety director at that time if I 13 would run the fire department until, you know, 14 they went through a process. And they never 15 went through a process. I just kept the job the 16 whole time. 17 Q. You weren't required to interview, correct? 18 A. No. 19 Q. You weren't required to take any test, correct? 20 A. No. 21 Q. You weren't required to go through an assessment 22 center, correct? 23 A. No.</p>	<p>1 departments, but -- 2 A. Some departments may. But if they had the 3 captain position still open and then the 4 assistant chief, battalion chiefs, you would 5 have different insignias on the collar for that. 6 Q. What did you wear as a chief? 7 A. Five bugles. 8 Q. Did anybody in the department have more than 9 five bugles? 10 A. No. 11 Q. Would that signify that you were the highest 12 level employee at the fire department -- 13 A. Right. 14 Q. -- the fact that you had five bugles? 15 A. Right. 16 Q. And a lieutenant has how many bugles? 17 A. One bugle. 18 Q. And when the team leaders -- Well, what did a 19 team leader have when that position existed? 20 A. The team leaders wore a gold collar brass. I 21 think it had AFD wrote on it. 22 Q. They had no bugles, correct? 23 A. They had no bugles.</p>

Page 10	Page 12
<p>1 Q. And when they were reclassified as lieutenants,</p> <p>2 they would then wear insignia with one bugle?</p> <p>3 A. Right.</p> <p>4 Q. And you said earlier, I think, battalion chief</p> <p>5 has three bugles; is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. Would battalion chief be the second highest</p> <p>8 level employee within the fire division?</p> <p>9 A. Deputy chief.</p> <p>10 Q. I'm sorry.</p> <p>11 What does a deputy chief wear?</p> <p>12 A. Four bugles.</p> <p>13 Q. So it goes lieutenant, one bugle; battalion</p> <p>14 chief -- Wait a minute. Who has two bugles?</p> <p>15 A. Captains.</p> <p>16 Q. And then battalion chief, three bugles?</p> <p>17 A. Right.</p> <p>18 Q. Deputy chief, four bugles; and -- is that</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. And chief, five bugles, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And is it your testimony that the number of</p>	<p>1 MR. MORGAN: Object to the form.</p> <p>2 A. The higher the name would recognize the -- The</p> <p>3 name of the position recognized the amount of</p> <p>4 bugles.</p> <p>5 Q. And the more bugles on an insignia would signify</p> <p>6 the higher position, correct?</p> <p>7 MR. MORGAN: Object to the form.</p> <p>8 A. With the deputy chief having four and the fire</p> <p>9 chief having five, yes.</p> <p>10 Q. Right. That's logical, correct?</p> <p>11 MR. MORGAN: Object to the form.</p> <p>12 A. Uh-huh (positive response).</p> <p>13 Q. Now, you said you served for a year and a half</p> <p>14 as the shift commander?</p> <p>15 A. Right.</p> <p>16 Q. And what job did you hold before shift</p> <p>17 commander?</p> <p>18 A. Staff captain, rotating shift commander.</p> <p>19 Q. Staff captain, is that the same thing as a</p> <p>20 captain or -- Well, what's the difference in a</p> <p>21 staff captain?</p> <p>22 A. I worked eight to five in administration. And</p> <p>23 when one of the -- The rotating part, when one</p>
Page 11	Page 13
<p>1 bugles on the insignia does not indicate rank</p> <p>2 within the department?</p> <p>3 MR. MORGAN: Object to the form.</p> <p>4 A. In certain departments it does.</p> <p>5 Q. But in the Auburn Fire Department, it does not?</p> <p>6 A. We don't have -- The captain position they</p> <p>7 recognized as a battalion chief so they went to</p> <p>8 three bugles.</p> <p>9 Q. But wouldn't you agree with me that the higher</p> <p>10 ranking employee you are, the more bugles you</p> <p>11 get on your insignia within the Auburn</p> <p>12 Department?</p> <p>13 A. The way we structure it now, yes.</p> <p>14 Q. The way you structure it now, yes?</p> <p>15 A. Uh-huh (positive response).</p> <p>16 Q. What about the way it was structured in 2006?</p> <p>17 A. The way we were structured then, the team leader</p> <p>18 had the AFD. And we had two lieutenants, and</p> <p>19 one retired and that left Gerald.</p> <p>20 Q. But you'll agree with me in 2006, the higher</p> <p>21 rank that you achieved would give you more</p> <p>22 bugles, is that correct, on your insignia; is</p> <p>23 that correct?</p>	<p>1 of the shift commanders at that time would take</p> <p>2 off, I would work in their position on their</p> <p>3 shift.</p> <p>4 Q. So going from that to shift commander was a</p> <p>5 promotion for you, correct?</p> <p>6 A. Huh-uh (negative response). I didn't -- It was</p> <p>7 just a name change. It was no change in pay or</p> <p>8 nothing.</p> <p>9 Q. And how did you get that position?</p> <p>10 A. The staff captain?</p> <p>11 Q. No. You're saying you were a staff captain and</p> <p>12 a rotating shift commander?</p> <p>13 A. I filled in for the rotating shift commanders</p> <p>14 when they was on vacation or out sick.</p> <p>15 Q. And then you were changed to full-time shift</p> <p>16 commander, correct?</p> <p>17 A. When one of the shift commanders retired, I</p> <p>18 moved to that position.</p> <p>19 Q. But in order to do that, you didn't have to take</p> <p>20 a test, correct?</p> <p>21 A. No.</p> <p>22 Q. You didn't have to go through an assessment</p> <p>23 center?</p>

Page 14	Page 16
<p>1 A. No. It was just a lateral move.</p> <p>2 Q. You didn't have to do an interview, correct?</p> <p>3 A. No.</p> <p>4 Q. Did the bugles on your insignia change when you</p> <p>5 moved to shift commander?</p> <p>6 A. No. I still had two.</p> <p>7 Q. How long were you the rotating shift commander</p> <p>8 and staff captain?</p> <p>9 A. I was promoted to staff captain in '94 --</p> <p>10 January of '94.</p> <p>11 Q. From what position?</p> <p>12 A. Firefighter.</p> <p>13 Q. And what process did you go through to get</p> <p>14 promoted --</p> <p>15 A. I went through an assessment center.</p> <p>16 Q. You went through an assessment center.</p> <p>17 Do you remember what company administered</p> <p>18 the assessment center?</p> <p>19 A. Kathleen Robinson administered that one.</p> <p>20 Q. And do you remember the components of that</p> <p>21 assessment center?</p> <p>22 A. We had a hot seat, a role play, a in-basket, and</p> <p>23 something else. I don't remember what it was.</p>	<p>1 A. No. I worked for Ampex Corporation.</p> <p>2 Q. But that was your first job with the City of</p> <p>3 Auburn was --</p> <p>4 A. Right.</p> <p>5 Q. -- firefighter?</p> <p>6 You heard me ask questions earlier, I</p> <p>7 assume, about the meetings that were held prior</p> <p>8 to the 2006 battalion chief promotion between</p> <p>9 you and Lee Lamar and Mr. Reeves and Mr. James.</p> <p>10 Do you specifically recall those meetings and</p> <p>11 what was discussed in those meetings?</p> <p>12 A. Somewhat of them. I wasn't in all of them.</p> <p>13 Sometimes I was out of town when they had a</p> <p>14 meeting.</p> <p>15 Q. Do you recall any discussions in those meetings</p> <p>16 about implementing a test with a cutoff score as</p> <p>17 a prerequisite for that job?</p> <p>18 A. Yes.</p> <p>19 Q. Whose decision was it?</p> <p>20 A. I don't remember. I don't really remember how</p> <p>21 that come about. The only thing I know is</p> <p>22 during the conversations and everything between</p> <p>23 all of us, it come up.</p>
Page 15	Page 17
<p>1 Q. Did you have to take a written test with a</p> <p>2 cutoff score?</p> <p>3 A. No.</p> <p>4 Q. And how many people received that promotion</p> <p>5 along with you?</p> <p>6 A. Myself and Jimmy Brown.</p> <p>7 Q. Jimmy Brown?</p> <p>8 A. Me and him was promoted at the same time.</p> <p>9 Q. Is he a white guy or black guy?</p> <p>10 A. He was a white guy.</p> <p>11 Q. Is he still with the department?</p> <p>12 A. He's deceased.</p> <p>13 Q. You heard me talking earlier about the</p> <p>14 assessment center. Is it your understanding --</p> <p>15 The assessment center that you went through did</p> <p>16 not include a test with a cutoff score, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And there was no test with a cutoff score that</p> <p>19 was a prerequisite to your assessment center; is</p> <p>20 that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And then before firefighter, that was your first</p> <p>23 job with the City of Auburn?</p>	<p>1 Q. You can't testify about who with the City had</p> <p>2 the idea or made the decision to have a test</p> <p>3 with a cutoff score; is that correct?</p> <p>4 A. No.</p> <p>5 Q. Do you recall if that decision was made before</p> <p>6 the City contracted with CWH?</p> <p>7 A. No. It was made along with CWH.</p> <p>8 Q. Do you recall whether or not Lee Lamar was the</p> <p>9 individual that suggested the number of 70 as</p> <p>10 the test score cutoff?</p> <p>11 A. Don't -- I can't testify to that, no.</p> <p>12 Q. Does that seem familiar to you that he did or --</p> <p>13 A. Well, 70 was discussed because it's a state</p> <p>14 standard to the fire college and National Fire</p> <p>15 Academy, and I remember the 70 score being</p> <p>16 discussed.</p> <p>17 Q. Was there any discussion about using a test</p> <p>18 without a cutoff score and just using it as a</p> <p>19 part of the whole process?</p> <p>20 A. I really don't remember if it was or not.</p> <p>21 Q. Looking back on it, do you have any opinions</p> <p>22 about whether or not that would have been a</p> <p>23 better idea?</p>

Page 18	Page 20
<p>1 MR. MORGAN: Object to the form of</p> <p>2 that question.</p> <p>3 A. No. I think the process went good.</p> <p>4 Q. As a fire chief, did you feel like the people</p> <p>5 that should be promoted to battalion chief</p> <p>6 should have had significant experience with the</p> <p>7 Auburn Fire Department?</p> <p>8 MR. MORGAN: Object to the form.</p> <p>9 A. Again, it's what you're talking about on</p> <p>10 experience. Knowledge and stuff of fire</p> <p>11 techniques, fire tactics -- I think they should</p> <p>12 have had the knowledge. But experience, I don't</p> <p>13 know exactly what you mean by that.</p> <p>14 Q. Well, knowledge, then. Do you feel like that</p> <p>15 the people that are promoted to battalion chief,</p> <p>16 that it was more important that they have the</p> <p>17 knowledge about firefighting or whether or not</p> <p>18 they could pass the test?</p> <p>19 MR. MORGAN: Object to the form of</p> <p>20 the question.</p> <p>21 A. If they had the knowledge of firefighting, they</p> <p>22 should have passed the test.</p> <p>23 Q. Did you review the test yourself?</p>	<p>1 A. Which people?</p> <p>2 Q. Probationary lieutenants --</p> <p>3 A. Yes.</p> <p>4 Q. -- non and probationary firefighters before</p> <p>5 2006?</p> <p>6 A. Before 2006, yes.</p> <p>7 Q. When were they allowed?</p> <p>8 A. They was allowed to on team leader promotions,</p> <p>9 on just about every promotion we done. If they</p> <p>10 was still on probation, they could apply.</p> <p>11 Q. I guess what I'm asking, though, is: Was there</p> <p>12 ever a captain or a battalion chief promotion</p> <p>13 before 2006 where probationary lieutenants and</p> <p>14 probationary and nonprobationary firefighters</p> <p>15 were allowed to apply?</p> <p>16 A. The last captain/lieutenant promotion we done</p> <p>17 was in 1996, and I was a shift commander at that</p> <p>18 time.</p> <p>19 Q. Is it true that in -- February 1 of 2006 when</p> <p>20 the team leaders were reclassified as</p> <p>21 lieutenants that Lieutenant Stephens was</p> <p>22 actually the only lieutenant in the department</p> <p>23 at that time?</p>
Page 19	Page 21
<p>1 A. No. The only thing that I reviewed was -- CWH</p> <p>2 brought in a pack of questions. It was 150 or</p> <p>3 175 questions and about 60 situational judgment</p> <p>4 questions. And there was about nine or ten of</p> <p>5 us -- the battalion chiefs, HRM, Bill James,</p> <p>6 Deputy Chief Lamar, and myself -- and we</p> <p>7 reviewed the questions and turned back to CWH</p> <p>8 what we thought was consistent with the way the</p> <p>9 City of Auburn operated. Did I see the final</p> <p>10 test? No.</p> <p>11 Q. You've never taken that test, correct?</p> <p>12 A. No.</p> <p>13 Q. Did you participate in any way in the decision</p> <p>14 to allow probationary lieutenants,</p> <p>15 nonprobationary and probationary firefighters to</p> <p>16 apply for the battalion chief position in 2006?</p> <p>17 A. Participate? What --</p> <p>18 Q. Were you a part of that decision?</p> <p>19 A. Yes. We recognized that by the City policies</p> <p>20 that they was eligible to apply for it.</p> <p>21 Q. Had those people I just identified ever been</p> <p>22 allowed to apply for battalion chief promotions</p> <p>23 before?</p>	<p>1 A. Yes. Yes.</p> <p>2 Q. Do you recall any discontent or dissatisfaction</p> <p>3 among white team leaders that lieutenant</p> <p>4 Stephens was the only lieutenant in the</p> <p>5 department?</p> <p>6 A. No.</p> <p>7 (Plaintiff's Exhibits 17 &amp; 18 marked</p> <p>8 for identification.)</p> <p>9 Q. I'll show you what I've marked as Plaintiff's</p> <p>10 Exhibits 17 and 18. It's the same letters we</p> <p>11 looked at before. Have you ever seen that</p> <p>12 before? Have you seen that before?</p> <p>13 A. Yes.</p> <p>14 Q. In response to that, is Exhibit 18 what you</p> <p>15 sent?</p> <p>16 A. Yes.</p> <p>17 Q. And in the third paragraph it says: Under our</p> <p>18 current city policies and job -- and, again,</p> <p>19 this letter is dated -- well, it's not dated.</p> <p>20 Yeah, it is. May 8 of 2006.</p> <p>21 In the third paragraph it says: Under our</p> <p>22 current City policies and job descriptions,</p> <p>23 there is no time in grade policy and no</p>



Page 22	Page 24
<p>1 cumulative point system. Because of our current</p> <p>2 advancement criteria, any nonprobationary</p> <p>3 employee may participate in the assessment. The</p> <p>4 fire division is currently reviewing a Career</p> <p>5 Development Plan that addresses these criteria.</p> <p>6 So when you wrote this letter, the City of</p> <p>7 Auburn was then reviewing a Career Development</p> <p>8 Plan that addressed the criteria of time in</p> <p>9 grade and a cumulative point system, correct?</p> <p>10 MR. MORGAN: Object to the form.</p> <p>11 A. Yes. We was working on one.</p> <p>12 Q. And that would be a Career Development Plan</p> <p>13 meaning that people could be promoted within the</p> <p>14 department based on time in grade and a</p> <p>15 cumulative point system; is that correct?</p> <p>16 MR. MORGAN: Object to the form.</p> <p>17 A. Yes.</p> <p>18 Q. Why was the City reviewing that?</p> <p>19 MR. MORGAN: Object to the form.</p> <p>20 A. We didn't have a current Career Development Plan</p> <p>21 that was really in place, and we was trying to</p> <p>22 develop one to set out guidelines for the</p> <p>23 firefighters where a career firefighter hired in</p>	<p>1 application for battalion chief?</p> <p>2 MR. MORGAN: Object to the form.</p> <p>3 A. That's according to what points was assigned to</p> <p>4 it. We never had got down to that point.</p> <p>5 Q. Just because I don't know, what would be an</p> <p>6 example of things considered in a cumulative</p> <p>7 point system? How would you accumulate points?</p> <p>8 A. The amount of certifications you might have or</p> <p>9 college degrees, time in grade and stuff like</p> <p>10 that.</p> <p>11 Q. What does time in grade mean?</p> <p>12 A. How long you've worked in that, you know, grade,</p> <p>13 that position.</p> <p>14 MR. HORSLEY: Let's take a minute.</p> <p>15 (Brief recess.)</p> <p>16 Q. (Continuing by Mr. Horsley) Are you familiar</p> <p>17 with Plaintiff's Exhibit 3, which is the 1991</p> <p>18 settlement order that we've talked about today?</p> <p>19 A. I'm familiar with it. I haven't looked at it in</p> <p>20 over eight or nine -- It's been a long time</p> <p>21 since I looked it.</p> <p>22 Q. Eight or nine years?</p> <p>23 A. No.</p>
Page 23	Page 25
<p>1 would know what he had to do to advance.</p> <p>2 Q. For that Career Development Plan, you would</p> <p>3 consider a cumulative point system and time in</p> <p>4 grade as requirements to promote, correct?</p> <p>5 MR. MORGAN: Object to the form.</p> <p>6 A. Before?</p> <p>7 Q. No. As a part of this Career Development Plan</p> <p>8 that y'all were looking into, you would consider</p> <p>9 time in grade and a cumulative point system for</p> <p>10 promotions; is that correct?</p> <p>11 MR. MORGAN: Object to the form.</p> <p>12 A. Yes. Once we got it there. But it wasn't in</p> <p>13 place at that time.</p> <p>14 Q. Right. Well, has it ever gotten in place?</p> <p>15 A. It hadn't been put in place when I retired in</p> <p>16 November.</p> <p>17 Q. Do you agree that those are important criteria</p> <p>18 for promotions, time in grade and a cumulative</p> <p>19 point system?</p> <p>20 MR. MORGAN: Object to the form.</p> <p>21 A. Some of it, yes.</p> <p>22 Q. Would those criteria have benefited Mr. Ogletree</p> <p>23 and Mr. Stephens in your opinion in their</p>	<p>1 Q. I thought you said --</p> <p>2 A. Eight or nine months, ever how long it's been</p> <p>3 since I left, or it might have been longer than</p> <p>4 that.</p> <p>5 Q. Do you know whether or not during the battalion</p> <p>6 chief promotions in 2006 that the City of Auburn</p> <p>7 was required to comply with that order?</p> <p>8 MR. MORGAN: Object to the form.</p> <p>9 Also calls for a legal opinion.</p> <p>10 A. Repeat that.</p> <p>11 Q. Yeah. During the battalion chief promotions in</p> <p>12 2006, do you know if the City of Auburn Fire</p> <p>13 Department was required to comply with that</p> <p>14 order?</p> <p>15 A. By the process we was going through, I thought</p> <p>16 we was complying with that form.</p> <p>17 Q. But the question was: Did you think y'all were</p> <p>18 required to comply with it?</p> <p>19 MR. MORGAN: Object to the form.</p> <p>20 A. Was we required? I never questioned it because</p> <p>21 the process I thought we was doing was meeting</p> <p>22 this criteria.</p> <p>23 Q. Did you review that order before y'all</p>



Deposition of Larry M. Langley

July 30, 2008

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<p>1 implemented the process for the battalion chief 2 promotion that you recall? 3 A. I don't remember if I did or not. 4 Q. But you've heard earlier discussions about 5 whether or not the order was still in force in 6 2006. Did you know one way or the other whether 7 or not that order was still in force? 8 A. Really I don't know. 9 Q. Am I correct in saying that the 10 reclassification -- that the City did not 11 consult this order before you reclassified the 12 team leaders to lieutenants in February of '06, 13 correct? 14 MR. MORGAN: Object to the form. 15 A. February? 16 Q. When the team leaders were reclassified to 17 lieutenants in February of 1 of 2006, do you 18 recall whether or not the City consulted this 19 order to see if that was proper or not? 20 MR. MORGAN: Object to the form. 21 A. Yes. Steve Reeves and the city attorney, you 22 know, they read it, and that's when they come 23 back with their judgment that we could make a</p>	<p>1 A. AFD insignia on the collar. 2 Q. Did they do the same job? 3 A. The job description was identical. 4 Q. Did they get the same pay? 5 A. Same pay. 6 Q. Was the lieutenant over a team leader? 7 A. No. 8 Q. Was that a promotion from team leader to 9 lieutenant? 10 A. No. It was a name change only. 11 Q. You were asked about people being eligible to 12 apply for the battalion chief promotion and the 13 City opening it up for everybody. 14 A. Right. 15 Q. When you applied for captain in 1993 -- 16 A. Yes. 17 Q. -- you were what rank? 18 A. Firefighter. 19 Q. Even though you were not a lieutenant, you were 20 eligible to have applied for captain? 21 A. Right. 22 Q. And Eddie Ogletree as a firefighter in 1993 23 could have applied for captain as well, couldn't</p>
Page 27	Page 29
<p>1 name change. 2 Q. Do you recall whether or not the City consulted 3 this order before the captain was reclassified 4 or renamed as battalion chief? 5 MR. MORGAN: Object to the form. 6 A. That I don't know. That was handled by the city 7 manager, David Watkins, at that time. 8 Q. Do you know whether or not the Plaintiff's 9 Exhibit 3 was consulted by the City before it 10 reclassified the shift commander position to 11 battalion chief? 12 MR. MORGAN: Object to the form. 13 A. Again, that was done by -- that decision was 14 made by the city manager, David Watkins. I 15 don't know if he did or not. 16 MR. HORSLEY: That's all. Thank you. 17 MR. MORGAN: I've got one or two 18 questions. 19 EXAMINATION 20 BY MR. MORGAN: 21 Q. The lieutenant/team leader reclassification, at 22 that time you testified lieutenant had a bar and 23 the team leaders had what, something --</p>	<p>1 he? 2 A. Right. 3 MR. MORGAN: No further questions. 4 MR. HORSLEY: Thank you. 5 (Deposition concluded at 6 approximately 2:40 p.m.) 7 ***** 8 FURTHER DEPONENT SAITH NOT 9 ***** 10 11 REPORTER'S CERTIFICATE 12 STATE OF ALABAMA: 13 MONTGOMERY COUNTY: 14 I, Pamela A. Wilbanks, CCR, Registered 15 Professional Reporter, and Commissioner for the State 16 of Alabama at Large, do hereby certify that I reported 17 the deposition of: 18 LARRY M. LANGLEY 19 who was first duly sworn by me to speak the truth, the 20 whole truth and nothing but the truth, in the matter 21 of: 22 EDDIE OGLETREE, an individual, 23 GERALD STEPHENS, an</p>

Deposition of Larry M. Langley

July 30, 2008

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1 Plaintiffs,  
 2 Vs.  
 3 CITY OF AUBURN, a municipality  
 4 in the State of Alabama, LARRY  
 5 LANGLEY, an individual, LEE LAMAR,  
 6 an individual, BILL HAM, JR., an  
 7 individual, STEVEN A. REEVES, an  
 8 individual, BILL JAMES, an  
 9 individual, CHARLES M. DUGGAN, an  
 10 individual, and CORTEZ LAWRENCE,  
 11 an individual,  
 12 Defendants.  
 13 In The U.S. District Court  
 14 For the Middle District of Alabama  
 15 Eastern Division  
 16 3:07-CV-867-WKW  
 17 on Wednesday, July 30, 2008.  
 18 The foregoing 29 computer printed pages  
 19 contain a true and correct transcript of the  
 20 examination of said witness by counsel for the parties  
 21 set out herein. The reading and signing of same is  
 22 hereby not waived.  
 23 I further certify that I am neither of kin nor

I, Larry M. Langley, hereby certify that I have read the foregoing transcript of my deposition given on Wednesday, July 30, 2008, and it is a true and correct transcript of the testimony given by me at the time and place stated with the corrections, if any, and the reasons therefor noted on a separate sheet of paper and attached hereto.

\_\_\_\_\_  
 Larry M. Langley

SWORN TO AND SUBSCRIBED before me this \_\_\_\_  
 day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
 NOTARY PUBLIC

8/5/08  
 Mr. Larry M. Langley  
 81 Lee Road 374  
 Valley, Alabama 36854  
 IN RE: OGLETREE AND STEPHENS VS. CITY OF AUBURN, ETC.  
 Dear Mr. Langley:  
 Enclosed is a condensed copy of the transcript of your deposition taken on Wednesday, July 30, 2008. Please read the transcript and make any corrections on the correction sheet provided specifying the page and line number of each correction.

You will find the original signature page attached to the front of the transcript. Even if there are no corrections, please sign the original signature page and have your signature notarized.

Please return the signature page and correction sheet within thirty days. The list of corrections will be attached to the original deposition and all parties will be notified of any changes.

Thank you for your prompt attention to this matter.

Sincerely,

Pamela A. Wilbanks, CCR, ACCR#391, RPR

cc: Mr. Richard Horsley  
 Mr. Randall Morgan  
 Mr. William Hancock

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1 of counsel to the parties to said cause nor in any  
 2 manner interested in the results thereof.  
 3 This 5th day of August 2008.  
 4  
 5  
 6  
 7  
 8  
 9  
 10  
 11

\_\_\_\_\_  
 Pamela A. Wilbanks, ACCR #334  
 Expiration Date: 9-30-2008  
 Registered Professional Reporter  
 and Commissioner for the State  
 of Alabama at Large

**DEPOSITION OF STEVEN A. REEVES**

**July 30, 2008**

**Pages 1 through 130**

**PREPARED BY:**

**Haislip, Ragan, Green, Starkie & Watson, P.C.**

**566 South Perry Street**

**Post Office Box 62**

**Montgomery, AL 36104**

**Phone: (334) 263-4455**

**Fax: (334) 263-9167**

**E-mail: [haislipragan@charter.net](mailto:haislipragan@charter.net)**

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

EDDIE OGLETREE, an individual,  
GERALD STEPHENS, an  
individual,

Plaintiffs,

Vs.

CIVIL ACTION NO.  
3:07-CV-867-WKW

CITY OF AUBURN, a municipality  
in the State of Alabama, LARRY  
LANGLEY, an individual, LEE LAMAR,  
an individual, BILL HAM, JR., an  
individual, STEVEN A. REEVES, an  
individual, BILL JAMES, an  
individual, CHARLES M. DUGGAN, an  
individual, and CORTEZ LAWRENCE,  
an individual,

Defendants

\* \* \* \* \*

DEPOSITION OF STEVEN A. REEVES, taken pursuant  
to stipulation and agreement before Pamela A. Wilbanks,  
Certified Court Reporter, ACCR# 391, Registered  
Professional Reporter and Commissioner for the State of  
Alabama at Large, in the Conference Room of Auburn City  
Hall, 144 Tichenor, Auburn, Alabama, on Wednesday, July  
30, 2008, commencing at approximately 9:15 a.m.

Page 2	Page 4
<p>1 2 3 4 APPEARANCES 5 6 FOR THE PLAINTIFF: 7 Mr. Richard F. Horsley 8 KING, HORSLEY &amp; LYONS 9 Attorneys at Law 10 1 Metroplex Drive 11 Suite 280 12 Birmingham, AL 35209 13 14 FOR THE DEFENDANT: 15 16 Mr. Randall Morgan 17 HILL, HILL, CARTER, FRANCO, COLE &amp; BLACK 18 Attorneys at Law 19 425 South Perry Street 20 Montgomery, Alabama 21 22 FOR CWH: 23 24 Mr. William K. Hancock 25 ADAMS &amp; REESE 26 Attorneys at Law 27 Suite 1100 28 2100 Third Avenue North 29 Birmingham, AL 35203 30 ALSO PRESENT: 31 Mr. D'Arcy Wernette 32 Mr. Bill James 33 Mr. Larry Langley 34 Mr. Lee Lamar 35 Mr. Eddie Ogletree 36 Mr. Gerald Stephens 37 38 39 40</p>	<p>1 STIPULATION 2 3 It is hereby stipulated and agreed by and 4 between counsel representing the parties that the 5 deposition of STEVEN A. REEVES is taken pursuant to the 6 Alabama Rules of Civil Procedure and that said 7 deposition may be taken before Pamela A. Wilbanks, 8 Registered Professional Reporter and Commissioner for 9 the State of Alabama at Large, without the formality of 10 a commission, that objections to questions other than 11 objections as to the form of the question need not be 12 made at this time but may be reserved for a ruling at 13 such time as the said deposition may be offered in 14 evidence or used for any other purpose by either party 15 provided for by the Statute. 16 17 It is further stipulated and agreed by and 18 between counsel representing the parties in this case 19 that the filing of said deposition is hereby waived and 20 may be introduced at the trial of this case or used in 21 any other manner by either party hereto provided for by 22 the Statute regardless of the waiving of the filing of 23 the same. 24 25 It is further stipulated and agreed by and 26 between the parties hereto and the witness that the</p>
Page 3	Page 5
<p>1 2 EXAMINATION INDEX 3 4 BY MR. HORSLEY ..... 5 5 BY MR. HANCOCK ..... 115 6 BY MR. HORSLEY ..... 123 7 8 ***** 9 10 PLAINTIFFS' EXHIBIT INDEX 11 12 1 Letter of agreement between the City of 14 13 Auburn and CWH Research, Inc. 14 2 Copy of Orientation Manual 18 15 3 Order Approving Settlement Agreement 32 16 4 4/4/96 letter to Gerald Stephens from 36 17 Ronnie Blankenship concerning his promotion 18 to lieutenant 19 5 Series of e-mails 65 20 6 City of Auburn Pay Table Beginning October 110 21 1, 2005 22 23 7 Proposed Modification of the Fire 58 24 Lieutenant Promotional Process signed by 25 Chris Turner 26 27 8 Proposed Modification of the Fire 58 28 Lieutenant Promotional Process signed by 29 Gerald Stephens 30 31 9 City of Auburn Personnel Policies 78 32 33 10 Notice of Right to Sue letter to Mr. 111 34 Ogletree and determination 35 11 Notice of Right to Sue letter to Mr. 111 36 Stephens and determination 37 38 12 Defendant Steven Reeves' Responses to 113 39 Plaintiffs' First Set of Interrogatories 40</p>	<p>1 signature of the witness to this deposition is hereby 2 not waived. 3 ***** 4 STEVEN A. REEVES 5 6 The witness, after having first been duly sworn 7 to speak the truth, the whole truth and nothing but the 8 truth testified as follows: 9 EXAMINATION 10 BY MR. HORSLEY: 11 Q. Please tell us your full name. 12 A. Steven Anderson Reeves. 13 Q. Mr. Reeves, my name is Richard Horsley. We've 14 met a couple of times before. I'm going to ask 15 you some questions today related to the lawsuit 16 that's been filed by Mr. Ogletree and 17 Mr. Stephens. 18 If you don't understand what I'm asking you, 19 please ask me to repeat the question or rephrase 20 it so that you understand it. Once you answer a 21 question, I'm going to assume that you 22 understood it and that you're giving the answer 23 you intended to give. Okay? 24 A. Okay.</p>

Page 6	Page 8
<p>1 Q. Where do you currently reside?</p> <p>2 A. 1071 Terrace Acres Drive, Auburn.</p> <p>3 Q. And where are you currently employed?</p> <p>4 A. City of Auburn.</p> <p>5 Q. In what capacity?</p> <p>6 A. I'm the human resources director.</p> <p>7 Q. And how long have you been the human resources</p> <p>8 director with the City of Auburn?</p> <p>9 A. Since 1994 -- 1993.</p> <p>10 Q. 1993?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Before '93 where were you employed?</p> <p>13 A. City of Auburn.</p> <p>14 Q. In what capacity?</p> <p>15 A. Risk manager.</p> <p>16 Q. Risk manager?</p> <p>17 How long did you hold that job?</p> <p>18 A. Six years.</p> <p>19 Q. And before that where were you employed?</p> <p>20 A. Auburn University.</p> <p>21 Q. And in what capacity?</p> <p>22 A. Faculty member.</p> <p>23 Q. What type of faculty member?</p>	<p>1 Q. They are not over 18 years of age, are they?</p> <p>2 A. One is 18.</p> <p>3 Q. What is his or her name?</p> <p>4 A. Danielle.</p> <p>5 Q. Who else?</p> <p>6 A. Sister-in-law, Susan McChesney. Sister-in-law,</p> <p>7 Ann May.</p> <p>8 Q. What are their husbands' names?</p> <p>9 A. Susan is not married and Ann is widowed.</p> <p>10 Q. Who else?</p> <p>11 A. Do you want Ann's children?</p> <p>12 Q. Not unless they are over 18.</p> <p>13 A. Okay. Rem May. Remmington May.</p> <p>14 Q. Is that it?</p> <p>15 A. I think so.</p> <p>16 Q. Do you have any relatives in Russell, Chambers,</p> <p>17 Montgomery, Lowndes, or Macon County?</p> <p>18 A. No.</p> <p>19 Q. Other than that I'm not going -- I'm going to</p> <p>20 try to get straight into the issues in this case</p> <p>21 because we don't have a lot of time. We're</p> <p>22 going to take four depositions today so I'm</p> <p>23 going to jump straight into the issues.</p>
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<p>1 A. I was a research associate.</p> <p>2 Q. How long did you hold that job?</p> <p>3 A. About nine months.</p> <p>4 Q. Before that where were you employed?</p> <p>5 A. Auburn University.</p> <p>6 Q. In what capacity?</p> <p>7 A. Graduate student.</p> <p>8 Q. Before that you were a student --</p> <p>9 A. Yes.</p> <p>10 Q. -- at Auburn?</p> <p>11 So the jobs you have held since you</p> <p>12 graduated from Auburn University would be with</p> <p>13 Auburn University and with the City of Auburn</p> <p>14 and that's it, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Do you have relatives -- I'm assuming you do</p> <p>17 have relatives that live in Lee County.</p> <p>18 A. I do.</p> <p>19 Q. Is it a lot or is it just a few?</p> <p>20 A. A few.</p> <p>21 Q. Can you tell me who they are?</p> <p>22 A. Starting with immediate family, my wife Jane,</p> <p>23 two children.</p>	<p>1 Tell me generally what your job duties are</p> <p>2 as the human resources director for the City of</p> <p>3 Auburn.</p> <p>4 A. Generally I coordinate compensation and</p> <p>5 benefits, employee relations, risk management</p> <p>6 and safety, employee training and development.</p> <p>7 Q. Do you participate in any way in the promotion</p> <p>8 practices of the City of Auburn?</p> <p>9 A. Yes.</p> <p>10 Q. In what capacity?</p> <p>11 A. I serve as a resource. I will do research as</p> <p>12 necessary.</p> <p>13 Q. Do you actually participate in decision-making</p> <p>14 with regard to promotions with City of Auburn</p> <p>15 employees?</p> <p>16 A. Only within my department.</p> <p>17 Q. You don't participate in the decisions to</p> <p>18 promote or not promote City of Auburn</p> <p>19 firefighters; is that correct?</p> <p>20 A. I have not.</p> <p>21 Q. You have not ever?</p> <p>22 A. I have not.</p> <p>23 Q. Are you in charge of implementing policies and</p>



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<p>1 procedures with regard to the promotional</p> <p>2 practices of the City of Auburn?</p> <p>3 A. Yes.</p> <p>4 Q. Is anybody else in charge of that or is that</p> <p>5 your sole -- or are you the only person that is,</p> <p>6 in fact, in charge of that?</p> <p>7 A. Each department head is charged with complying</p> <p>8 with the personnel policies as they pertain to</p> <p>9 promotions.</p> <p>10 Q. But you as the human resources director are in</p> <p>11 charge of enforcing the promotional policies and</p> <p>12 procedures throughout the City of Auburn. Is</p> <p>13 that a fair statement?</p> <p>14 MR. MORGAN: Object to the form.</p> <p>15 A. No.</p> <p>16 Q. So it's just within your department; is that</p> <p>17 correct?</p> <p>18 A. I make recommendations regarding promotions</p> <p>19 within my department.</p> <p>20 Q. Let's say from February until June of 2006, who</p> <p>21 would have been in charge of promotions at the</p> <p>22 City of Auburn Fire Division?</p> <p>23 A. The city manager.</p>	<p>1 A. Ultimately, yes.</p> <p>2 Q. When you say ultimately, I'm assuming that there</p> <p>3 are other individuals that would have also been</p> <p>4 involved in the promotion of firefighters within</p> <p>5 the City of Auburn Fire Division; is that</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. And, again, concentrating on the time from</p> <p>9 February of '06 through June of '06, who at the</p> <p>10 City of Auburn Fire Division would have been in</p> <p>11 the decision-making process to promote</p> <p>12 firefighters?</p> <p>13 A. Bill James.</p> <p>14 Q. And he is the public safety director; is that</p> <p>15 correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Still?</p> <p>18 A. Still.</p> <p>19 Q. Who else?</p> <p>20 A. Lee Lamar.</p> <p>21 Q. What's Mr. Lamar's position?</p> <p>22 A. Currently he's the fire chief.</p> <p>23 Q. In May of '06, what was his position with the</p>
Page 11	Page 13
<p>1 Q. And what was his name? What is his name?</p> <p>2 A. Can you give me the dates again?</p> <p>3 Q. Yeah. From February of '06 until June of '06.</p> <p>4 A. Well, from February 10 or February 11, '06 -- I</p> <p>5 think I've got this date right. From February</p> <p>6 11, '06, it would have been the current city</p> <p>7 manager.</p> <p>8 Q. Who is ...</p> <p>9 A. Charles M. Duggan, Jr.</p> <p>10 MR. HORSLEY: Off the record for a</p> <p>11 minute.</p> <p>12 (Brief off-the-record discussion.)</p> <p>13 Q. Charles Duggan was the city manager from</p> <p>14 February 11 of '06 until when?</p> <p>15 A. He's currently the city manager.</p> <p>16 Q. So he would have been the city manager in May of</p> <p>17 '06, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And you just testified that he was -- he would</p> <p>20 have been the person in charge of promotions at</p> <p>21 the City of Auburn Fire Division; is that</p> <p>22 correct?</p> <p>23 MR. MORGAN: Object to the form.</p>	<p>1 City of Auburn?</p> <p>2 A. Deputy fire chief.</p> <p>3 Q. Who was the fire chief at that time?</p> <p>4 A. Larry Langley.</p> <p>5 Q. Bill James, Lee Lamar. Who else would have been</p> <p>6 involved in the decision to promote firefighters</p> <p>7 at the City of Auburn?</p> <p>8 A. I believe that's all.</p> <p>9 Q. That's it?</p> <p>10 And I may be wrong about this, but would</p> <p>11 Bill James and Larry Langley recommend</p> <p>12 firefighters for promotion and then Charles</p> <p>13 Duggan would have the ultimate say in whether or</p> <p>14 not those people were actually promoted?</p> <p>15 A. Correct.</p> <p>16 Q. Do you know back in May of 2006 whether or not</p> <p>17 Mr. Duggan had to approve every promotion or, if</p> <p>18 there was a dispute about a promotion, he would</p> <p>19 have the ultimate say?</p> <p>20 A. He has to approve.</p> <p>21 Q. He has to approve every promotion; is that</p> <p>22 correct?</p> <p>23 A. Every promotion, yes.</p>

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<p>1 Q. Tell me what, if any, participation you had in</p> <p>2 the battalion chief promotion that occurred in</p> <p>3 May of 2006.</p> <p>4 A. I helped identify the firm that would guide us</p> <p>5 through that process. I helped put together a</p> <p>6 contract to employ that firm. I participated in</p> <p>7 the discussions about the process. I helped</p> <p>8 facilitate the interactions between the firm and</p> <p>9 the City.</p> <p>10 (Plaintiff's Exhibit 1 marked for</p> <p>11 identification.)</p> <p>12 Q. What I'm going to mark as Plaintiff's Exhibit</p> <p>13 Number 1 is a letter of agreement that appears</p> <p>14 to be between the City of Auburn and the CWH</p> <p>15 Research, Inc. Is that the agreement or the</p> <p>16 contract that you spoke about just a moment ago</p> <p>17 between the research company and the City of</p> <p>18 Auburn?</p> <p>19 A. This appears to be the agreement.</p> <p>20 Q. And how did you go about finding this company?</p> <p>21 A. This company was recommended to me by a lady</p> <p>22 named Kathleen Robinson.</p> <p>23 Q. Who is she?</p>	<p>1 Q. Right.</p> <p>2 Well, are you familiar with the 1991</p> <p>3 settlement order in the McCormick case?</p> <p>4 MR. MORGAN: Object to the form. In</p> <p>5 the what case?</p> <p>6 MR. HORSLEY: I got the name wrong.</p> <p>7 Hammock case.</p> <p>8 MR. MORGAN: Object to the form.</p> <p>9 A. Yes.</p> <p>10 Q. You're familiar with the order approving a</p> <p>11 settlement agreement that requires an assessment</p> <p>12 center for certain promotions within the Auburn</p> <p>13 City Fire Division?</p> <p>14 A. I am.</p> <p>15 Q. Is it your testimony that Plaintiff's Exhibit</p> <p>16 Number 1 qualifies as an assessment center</p> <p>17 pursuant to that order?</p> <p>18 A. No.</p> <p>19 Q. Is it your testimony that this company -- that</p> <p>20 the hiring of this company qualifies as an</p> <p>21 assessment center pursuant to the order in the</p> <p>22 Hammock case?</p> <p>23 MR. MORGAN: Object to the form.</p>
Page 15	Page 17
<p>1 A. Kathleen Robinson was the individual who</p> <p>2 formerly did promotion processes for the ranks</p> <p>3 of lieutenant and captain for the City of</p> <p>4 Auburn.</p> <p>5 Q. What was your understanding of what this company</p> <p>6 was supposed to do with regard to the battalion</p> <p>7 chief promotion in May of 2006?</p> <p>8 A. They were to develop a job-related neutral</p> <p>9 selection process for us to use to make</p> <p>10 promotions to the rank of battalion chief.</p> <p>11 Q. Had the City of Auburn ever done any contract</p> <p>12 work with this firm before?</p> <p>13 A. No.</p> <p>14 Q. You're not testifying that this company, CWH, is</p> <p>15 an outside assessment center, are you?</p> <p>16 A. I ...</p> <p>17 Q. Do you know what an assessment center is?</p> <p>18 A. I know what an assessment center is.</p> <p>19 Q. This company is not an assessment center, are</p> <p>20 they?</p> <p>21 MR. MORGAN: Object to the form.</p> <p>22 A. An assessment center is not a brick-and-mortar</p> <p>23 structure.</p>	<p>1 A. No.</p> <p>2 Q. Is it true that this company, CWH, was hired to</p> <p>3 administer a written test that anyone applying</p> <p>4 for the battalion chief promotion had to take?</p> <p>5 Is that correct?</p> <p>6 A. They developed a neutral job-related process for</p> <p>7 us to use in making a promotion decision.</p> <p>8 Q. Other than administering the written test that</p> <p>9 was taken by all the battalion chief applicants,</p> <p>10 what else did they do to participate in the</p> <p>11 battalion chief promotion process?</p> <p>12 A. They recommended and developed a series of</p> <p>13 exercises to help determine who was the best</p> <p>14 candidate for the promotion.</p> <p>15 Q. Was that provided to the City in some written</p> <p>16 form?</p> <p>17 A. The exercises?</p> <p>18 Q. Yes, sir.</p> <p>19 A. Yes.</p> <p>20 Q. Do you know if the City of Auburn still has that</p> <p>21 document that details the exercises?</p> <p>22 A. In one form, yes.</p> <p>23 Q. What do you mean in one form?</p>

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<p>1 A. Well, the orientation manual is one form.</p> <p>2 Q. What other form do y'all have it in writing?</p> <p>3 A. There was a report -- Well, I think the</p> <p>4 Candidate Feedback Reports provided some</p> <p>5 information about it. There was a final report</p> <p>6 about the overall process that provided details</p> <p>7 about it.</p> <p>8 Q. Is the orientation manual that you just</p> <p>9 testified about -- Is Plaintiff's Exhibit Number</p> <p>10 2 a copy of that orientation manual?</p> <p>11 (Plaintiff's Exhibit 2 marked for</p> <p>12 identification.)</p> <p>13 A. It appears to be at least part of it.</p> <p>14 Q. Part of it? What else --</p> <p>15 A. I can't tell.</p> <p>16 Q. Your testimony is Plaintiff's Exhibit 2 is part</p> <p>17 of the orientation manual submitted by CWH; is</p> <p>18 that correct?</p> <p>19 A. It appears to be.</p> <p>20 Q. Does the City of Auburn to your knowledge still</p> <p>21 have the actual test that was administered to</p> <p>22 the battalion chief applicants?</p> <p>23 A. We don't.</p>	<p>1 Q. Well, let me rephrase the question.</p> <p>2 Had the City of Auburn used an outside</p> <p>3 assessment center for any promotion within the</p> <p>4 fire division since the 1991 settlement order?</p> <p>5 A. Yes.</p> <p>6 Q. And what promotions did it use an assessment</p> <p>7 center for?</p> <p>8 A. I believe there was a 1994 captains promotion</p> <p>9 and a 1996 lieutenant and captains promotion.</p> <p>10 Q. If you can, describe the assessment center that</p> <p>11 was used for those two promotions.</p> <p>12 A. To my knowledge it involved a conglomeration of</p> <p>13 exercises -- job-related exercises.</p> <p>14 Q. And it was formulated by whom?</p> <p>15 A. Kathleen Robinson.</p> <p>16 Q. And I guess what I'm asking you to do for my</p> <p>17 education is define what you believe an outside</p> <p>18 assessment center to be.</p> <p>19 A. An assessment center -- An outside assessment</p> <p>20 center would consist of a conglomeration of</p> <p>21 devices used -- job-related devices used to</p> <p>22 determine who the best candidates were for a</p> <p>23 promotion.</p>
Page 19	Page 21
<p>1 Q. What happened to that test?</p> <p>2 A. The test was returned to CWH.</p> <p>3 Q. You said earlier that you spoke with an</p> <p>4 individual about hiring CWH. Tell me what</p> <p>5 happened that participated your seeing the need</p> <p>6 to hire a company such as CWH to get involved in</p> <p>7 the battalion chief promotion.</p> <p>8 A. The settlement agreement in 1991 called for a</p> <p>9 process utilizing outside assessors and a</p> <p>10 consultant. Kathleen Robinson was the person</p> <p>11 that did that for us. She retired.</p> <p>12 Q. Robinson?</p> <p>13 A. Yes.</p> <p>14 Q. And she's the one who you consulted with in</p> <p>15 hiring CWH, correct?</p> <p>16 A. I asked her if she was available to do this</p> <p>17 work, and she said she was retiring and</p> <p>18 recommended CWH to me.</p> <p>19 Q. Had the City of Auburn to your knowledge used a</p> <p>20 company like CWH to perform some type of written</p> <p>21 test or assessment center prior to the battalion</p> <p>22 chief promotion in May of 2006?</p> <p>23 A. Like CWH?</p>	<p>1 Q. And by outside assessment center, does that mean</p> <p>2 someone or some company has to implement those</p> <p>3 processes that is not employed or has any</p> <p>4 connection with the City of Auburn?</p> <p>5 A. I think that's a fair statement.</p> <p>6 Q. And you said that Kathleen Robinson was in</p> <p>7 charge of that for the City of Auburn for a</p> <p>8 period of time, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Was she employed by the City of Auburn?</p> <p>11 A. No. She was contracted by the City of Auburn.</p> <p>12 Q. What was Kathleen Robinson's job to your</p> <p>13 knowledge?</p> <p>14 A. Professionally?</p> <p>15 Q. Yeah.</p> <p>16 A. I recall she was involved in testing services at</p> <p>17 either Cobb County or DeKalb County in the</p> <p>18 Atlanta metro area.</p> <p>19 Q. So she lives in the Atlanta metro area or did</p> <p>20 live in the Atlanta Metro ...</p> <p>21 A. I assume that's where she lived.</p> <p>22 Q. Do you know who actually made the decision to</p> <p>23 hire Kathleen Robinson to implement the outside</p>

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<p>1 assessment center?</p> <p>2 A. The lawyers involved in the original litigation.</p> <p>3 Q. The original Clinton Hammock litigation?</p> <p>4 A. Correct.</p> <p>5 Q. Do you know if she still lives in the Atlanta</p> <p>6 metro area?</p> <p>7 A. I don't know.</p> <p>8 Q. Does she have a company name to your knowledge?</p> <p>9 A. I don't know.</p> <p>10 Q. You don't know if there's some -- if she's</p> <p>11 incorporated under some other name?</p> <p>12 A. I haven't had any further contact with her.</p> <p>13 Q. It's your testimony that she developed the</p> <p>14 outside assessment center for the 1994 captains</p> <p>15 promotion and the 1996 lieutenant promotion; is</p> <p>16 that correct?</p> <p>17 A. That's my understanding.</p> <p>18 Q. Is it also your understanding that pursuant to</p> <p>19 either of those promotions or pursuant to</p> <p>20 neither of those promotions there was a written</p> <p>21 test given to the applicants with a cutoff</p> <p>22 score; is that correct?</p> <p>23 A. I don't recall there was a written test.</p>	<p>1 together and decided that there needed to be an</p> <p>2 outside assessment center for this promotion,</p> <p>3 and you contacted Kathleen Robinson? She had</p> <p>4 retired and told you you needed to contact CWH?</p> <p>5 Is that the chronology of how it occurred?</p> <p>6 A. Yes.</p> <p>7 Q. And then the individuals I just named, along</p> <p>8 with you, got with CWH, and that group made the</p> <p>9 decision that a test with a cutoff score was</p> <p>10 going to be given; is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Were you personally involved in meetings with</p> <p>13 CWH, Langley, Lamar, the safety director where</p> <p>14 y'all discussed with CWH that a test needed to</p> <p>15 be given with a cutoff score?</p> <p>16 A. Yes.</p> <p>17 Q. Is it your testimony that the City of Auburn had</p> <p>18 not made that decision before it contracted with</p> <p>19 CWH about the test or the cutoff score?</p> <p>20 A. Could you repeat the question?</p> <p>21 Q. Yeah.</p> <p>22 Did you, the public safety director, Lamar,</p> <p>23 and Langley make the decision that there needed</p>
Page 23	Page 25
<p>1 Q. You don't recall if there was a written test?</p> <p>2 A. Right.</p> <p>3 Q. Are you saying there may have been and you don't</p> <p>4 recall?</p> <p>5 A. I don't -- I was not directly involved in that</p> <p>6 process.</p> <p>7 Q. With regard to the battalion chief promotion in</p> <p>8 May of 2006, who at the City of Auburn decided</p> <p>9 that there was going to be a written test with a</p> <p>10 cutoff score as a factor in the promotion?</p> <p>11 A. It was a collective decision made by me, the</p> <p>12 public safety director, the deputy fire chief,</p> <p>13 and CWH.</p> <p>14 Q. And at that time the deputy fire chief was Lee</p> <p>15 Lamar?</p> <p>16 A. Correct. And the fire chief.</p> <p>17 Q. Who was Langley?</p> <p>18 A. Right.</p> <p>19 And CWH.</p> <p>20 Q. And CWH.</p> <p>21 So for the battalion chief promotion, is it</p> <p>22 your testimony that you, the public safety</p> <p>23 director, the deputy fire chief, the chief got</p>	<p>1 to be a test with a cutoff score given prior to</p> <p>2 the time y'all contracted with CWH?</p> <p>3 A. No.</p> <p>4 Q. Do you recall the individual's name that y'all</p> <p>5 were dealing with at CWH?</p> <p>6 A. Primarily Michael Blair.</p> <p>7 Q. Do you independently recall as you sit here</p> <p>8 today meetings with those individuals and</p> <p>9 Mr. Blair where the decision was made that a</p> <p>10 test was going to be given for the battalion</p> <p>11 chief promotion with a cutoff score?</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall who actually first recommended</p> <p>14 that that test be given?</p> <p>15 A. The CWH process incorporates a testing option.</p> <p>16 Through our discussions it was determined that</p> <p>17 giving a test was a good way to evaluate the</p> <p>18 subject matter expertise of the candidates in</p> <p>19 the area of fire prevention.</p> <p>20 Q. Did Mr. Blair, the CWH representative, recommend</p> <p>21 that a test be given or did he say that that was</p> <p>22 a necessary part of CWH's involvement in this</p> <p>23 process?</p>

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<p>1 MR. HANCOCK: Object to the form.</p> <p>2 A. As I said, the CWH process incorporated an</p> <p>3 option to have a test.</p> <p>4 Q. It wasn't a requirement; it was an option; is</p> <p>5 that correct?</p> <p>6 A. It was an option, correct.</p> <p>7 Q. And was it at the City's discretion -- Was it at</p> <p>8 the City's discretion to give or not give the</p> <p>9 test with a cutoff score?</p> <p>10 A. Yes.</p>	<p>1 A. It was our, as you stated, discretion.</p> <p>2 Q. During those meetings about the test, am I</p> <p>3 correct that the City of Auburn made the</p> <p>4 decision to implement that test as the first</p> <p>5 factor in the battalion chief promotion with a</p> <p>6 cutoff score, meaning that if you did not meet</p> <p>7 the cutoff score, you could not progress further</p> <p>8 in the battalion chief promotion process?</p> <p>9 A. Would you repeat the question?</p> <p>10 Q. Yeah.</p>
<p>11 MR. MORGAN: Object to the form.</p> <p>12 Q. It was?</p> <p>13 Do you recall whether or not Lee Lamar</p> <p>14 suggested that a cutoff score of 70 is something</p> <p>15 that he would prefer during those meetings?</p> <p>16 A. Our discussions included the use of a cutoff</p> <p>17 score of 70 percent.</p> <p>18 Q. Do you recall specifically who suggested the</p> <p>19 cutoff score of 70?</p> <p>20 A. Who first voiced that, I don't know.</p> <p>21 Q. You don't recall if it was Lee Lamar?</p> <p>22 A. I know Lee Lamar stated that 70 percent was the</p> <p>23 common cutoff score used in the fire service.</p>	<p>11 Is it true that the -- Isn't it true that</p> <p>12 the City of Auburn made the decision that the</p> <p>13 test with a cutoff score was the initial factor</p> <p>14 in whether an applicant proceeded through the</p> <p>15 rest of the process?</p> <p>16 A. Again, this was a decision made collectively in</p> <p>17 consultation with CWH. Had the City said we</p> <p>18 don't want to use a cutoff score, I don't think</p> <p>19 CWH would have argued with us.</p> <p>20 Q. CWH didn't care one way or the other whether or</p> <p>21 not the City used a cutoff score or whether the</p> <p>22 test was a deciding factor if someone got to</p> <p>23 progress through the process, did they?</p>
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<p>1 If people went to the fire college and they took</p> <p>2 a test, there was a 70 percent cutoff. I</p> <p>3 understand at the National Fire Academy, some of</p> <p>4 the courses there have a 70 percent cutoff. Our</p> <p>5 practice in other testing procedures in the City</p> <p>6 of Auburn had been to use a 70 percent cutoff.</p> <p>7 We saw it as something consistent and also in</p> <p>8 keeping with tradition in the fire service.</p> <p>9 Q. Am I correct in saying that the City of Auburn</p> <p>10 representatives during these meetings were the</p> <p>11 individuals who suggested the 70 cutoff score</p> <p>12 rather than the CWH representative?</p> <p>13 MR. MORGAN: Object to the form.</p> <p>14 A. I don't know if CWH said you can use a cutoff</p> <p>15 score or if we said we want to use a cutoff</p> <p>16 score. It was --</p> <p>17 Q. You don't recall?</p> <p>18 A. No, I don't.</p> <p>19 Q. Are you aware that CWH pursuant to administering</p> <p>20 this test required that there be a cutoff score?</p> <p>21 A. No. I think that was our choice.</p> <p>22 Q. That was your choice? The City of Auburn's</p> <p>23 choice?</p>	<p>1 MR. MORGAN: Object to the form.</p> <p>2 A. I'm not sure I'd go that far.</p> <p>3 Q. Well, CWH was hired as a consulting firm to</p> <p>4 administer a test; is that correct?</p> <p>5 A. They were designed to --</p> <p>6 MR. MORGAN: Object to the form.</p> <p>7 A. -- hired to design and provide consulting</p> <p>8 services to the City so that we had a fair</p> <p>9 promotional process.</p> <p>10 Q. And if the City had decided that the test would</p> <p>11 be administered by CWH and that there would not</p> <p>12 be a cutoff score and that the test would simply</p> <p>13 be part of a cumulative process for the</p> <p>14 battalion chief promotion, CWH to your knowledge</p> <p>15 wouldn't have objected to that; is that correct?</p> <p>16 MR. MORGAN: Object to the form.</p> <p>17 A. I think they would have allowed us to do that.</p> <p>18 Q. They would have allowed you to do that?</p> <p>19 A. (Witness nods head positively.)</p> <p>20 Q. You've got to answer out loud.</p> <p>21 They would have allowed you to do that,</p> <p>22 correct?</p> <p>23 A. Yes.</p>

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<p>1 Q. My point is: The City of Auburn had the</p> <p>2 discretion as to how the test and the cutoff</p> <p>3 score would be implemented into the promotional</p> <p>4 process. Is that a fair statement?</p> <p>5 A. Yes.</p> <p>6 Q. CWH didn't make that decision, did they?</p> <p>7 MR. MORGAN: He's answered that about</p> <p>8 five times.</p> <p>9 Q. CWH didn't make that decision, did they?</p> <p>10 MR. MORGAN: Object to the form.</p> <p>11 A. It was a collective decision, but ultimately it</p> <p>12 was the City's discretion to --</p> <p>13 Q. Well, if the City had the ultimate discretion,</p> <p>14 then CWH didn't have any discretion to decide</p> <p>15 how that test would play a part in the</p> <p>16 promotional process, did they?</p> <p>17 MR. MORGAN: Object to the form.</p> <p>18 A. We certainly listened carefully to their advice.</p> <p>19 Q. They could make recommendations but they could</p> <p>20 not make decisions; is that correct?</p> <p>21 A. Correct.</p> <p>22 Q. Do you recall -- I may have asked this</p> <p>23 question. I simply can't remember.</p>	<p>1 City was under the impression that the 1991</p> <p>2 order had expired?</p> <p>3 MR. MORGAN: Object to the form.</p> <p>4 Q. When I speak of the 1991 order -- Let's go ahead</p> <p>5 and mark it and we'll talk about it in detail in</p> <p>6 a little while.</p> <p>7 But you're familiar with the Clinton Hammock</p> <p>8 order approving the settlement agreement,</p> <p>9 correct?</p> <p>10 A. I am.</p> <p>11 (Plaintiff's Exhibit 3 marked for</p> <p>12 identification.)</p> <p>13 Q. And that's the document that required the City</p> <p>14 of Auburn to conduct an outside assessment</p> <p>15 center back then for any captain promotion or</p> <p>16 any lieutenant promotion, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Tell me, then, if the City believed that that</p> <p>19 order had either expired or that the court no</p> <p>20 longer had jurisdiction over the City of</p> <p>21 Auburn's promotional practices, why did you and</p> <p>22 these other gentlemen feel that an assessment</p> <p>23 center was necessary for this promotion?</p>
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<p>1 Do you recall if CWH recommended that the</p> <p>2 test be the deciding factor -- the test with a</p> <p>3 cutoff score be the deciding factor as to</p> <p>4 whether or not an applicant proceeded through</p> <p>5 the battalion chief promotional process?</p> <p>6 A. Again, this was a collective decision made in</p> <p>7 discussion with CWH.</p> <p>8 Q. And if CWH is going to say that Lee Lamar</p> <p>9 suggested the 70 cutoff score, you don't have</p> <p>10 anything to dispute that, do you?</p> <p>11 A. No.</p> <p>12 Q. Tell me why you and the public safety director</p> <p>13 and Lee Lamar and Langley decided that CWH</p> <p>14 needed to be hired in order to conduct the</p> <p>15 outside assessment center if the City of Auburn</p> <p>16 at that time in May of 2006 -- Well, the test</p> <p>17 was given before then. Let's just say between</p> <p>18 February and May of 2006. Let me start over.</p> <p>19 Why did you and the public safety director,</p> <p>20 Lee Lamar, and Langley decide during that time</p> <p>21 period from February through May of 2006 that an</p> <p>22 outside assessment center needed to take place</p> <p>23 pursuant to the battalion chief promotion if the</p>	<p>1 MR. MORGAN: Object to the form.</p> <p>2 A. I think -- I won't speculate. We had</p> <p>3 considered the -- if the order approving</p> <p>4 settlement was still in effect with counsel</p> <p>5 narrowly construed to the issue of the matter of</p> <p>6 reclassifying team leaders to lieutenant. We</p> <p>7 came to a point where we needed to make a</p> <p>8 promotion to fill some vacant positions at the</p> <p>9 battalion chief level. We felt that the best</p> <p>10 course of action -- since we had not gone</p> <p>11 through a process as we had with the team leader</p> <p>12 to lieutenant reclassification, the best course</p> <p>13 of action was to follow what was stipulated in</p> <p>14 the assessment center or -- I'm sorry -- in the</p> <p>15 settlement agreement from 1991.</p> <p>16 Q. Have you read the order approving settlement</p> <p>17 agreement marked as Plaintiff's Exhibit 3?</p> <p>18 A. I have.</p> <p>19 Q. Have you read it in preparation for this</p> <p>20 deposition?</p> <p>21 A. I have.</p> <p>22 Q. Do you know of anywhere in that order where it</p> <p>23 states that a written test with a cutoff score</p>



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<p>1 is required to be a part of the assessment</p> <p>2 center?</p> <p>3 A. It does not specifically say that.</p> <p>4 Q. Again, I'm not sure I followed you when you were</p> <p>5 talking about the lieutenant or the team leader</p> <p>6 reclassification to lieutenant. I think you</p> <p>7 said that during that process --</p> <p>8 Well, tell me what you said. I don't want</p> <p>9 to mischaracterize your testimony. Tell me</p> <p>10 again why an assessment center -- why the court</p> <p>11 order was not followed pursuant to the team</p> <p>12 leader to lieutenant reclassification.</p> <p>13 MR. MORGAN: Object to the form.</p> <p>14 Q. You'll agree with me that the order approving</p> <p>15 settlement agreement was not complied with</p> <p>16 pursuant to the February 1, 2006</p> <p>17 reclassification of team leaders to lieutenants;</p> <p>18 is that correct?</p> <p>19 MR. MORGAN: Object to the form.</p> <p>20 Q. Will you agree with me on that?</p> <p>21 A. I would agree that we did some research with</p> <p>22 legal counsel, and it was determined that the</p> <p>23 settlement agreement was no longer in force.</p>	<p>1 Q. It was not?</p> <p>2 You've already testified that during that</p> <p>3 process, an outside assessment center was used,</p> <p>4 correct?</p> <p>5 A. It was.</p> <p>6 (Plaintiff's Exhibit 4 marked for</p> <p>7 identification.)</p> <p>8 Q. I'll show what you I've marked as Plaintiff's</p> <p>9 Exhibit Number 4.</p> <p>10 MR. MORGAN: Was he a team leader?</p> <p>11 MR. HORSLEY: Well, hold on.</p> <p>12 Q. When was the team leader position started at the</p> <p>13 City of Auburn Fire Division?</p> <p>14 A. I think it was started sometime in 1989 or 1990.</p> <p>15 Q. In 1996 when Gerald Stephens was promoted to</p> <p>16 lieutenant --</p> <p>17 I'm going to show you what's marked as</p> <p>18 Plaintiff's Exhibit Number 4. Have you ever</p> <p>19 seen that letter?</p> <p>20 A. I've seen a copy of this.</p> <p>21 Q. Is it your understanding that he was promoted</p> <p>22 from the team leader position or from the</p> <p>23 firefighter position to lieutenant?</p>
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<p>1 And at that point, based on a petition from team</p> <p>2 leaders, based on the interest of stimulating</p> <p>3 morale in the department, based on</p> <p>4 considerations of the cost of conducting</p> <p>5 assessment centers, we determined that changing</p> <p>6 the job title of equal -- of a position that</p> <p>7 had -- that was equal to lieutenant was an</p> <p>8 appropriate thing to do.</p> <p>9 Q. So are you testifying that a firefighter or a</p> <p>10 City of Auburn Fire Division employee that</p> <p>11 moved -- prior to February 1 of 2006, before</p> <p>12 that time, a firefighter that moved from team</p> <p>13 leader to lieutenant was not considered to be a</p> <p>14 promotion?</p> <p>15 A. It was not a promotion.</p> <p>16 Q. It was not a promotion?</p> <p>17 A. No.</p> <p>18 Q. Is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. When Lieutenant Stevens went from team leader to</p> <p>21 lieutenant in 1996, was that not a promotion?</p> <p>22 MR. MORGAN: Object to the form.</p> <p>23 A. No.</p>	<p>1 A. I understand he was a firefighter.</p> <p>2 Q. Why did he not have to be promoted to team</p> <p>3 leader before being promoted to lieutenant back</p> <p>4 in 1996?</p> <p>5 MR. MORGAN: Object to the form.</p> <p>6 A. I'm sorry. Repeat the question.</p> <p>7 Q. Yes.</p> <p>8 Why was he not required to be promoted to</p> <p>9 team leader before being promoted to lieutenant</p> <p>10 back in 1996?</p> <p>11 A. To my knowledge he didn't apply for team leader.</p> <p>12 Q. Well, my question is: You're saying that team</p> <p>13 leader and lieutenant were the exact same</p> <p>14 position before February 1 of 2006, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Then why do they have different names?</p> <p>17 A. One was -- One evolved out of the court-ordered</p> <p>18 settlement and one evolved out of traditional</p> <p>19 rank structure in the fire service.</p> <p>20 Q. Which one evolved out of the court-ordered</p> <p>21 settlement?</p> <p>22 A. Team leader.</p> <p>23 Q. And is there a pay differential between -- Was</p>

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<p>1 there a pay differential between the job of team</p> <p>2 leader and lieutenant before February 1 of 2006?</p> <p>3 A. No.</p> <p>4 Q. None?</p> <p>5 A. None.</p> <p>6 Q. All team leaders and all lieutenants made the</p> <p>7 exact same wage. Is that your testimony?</p> <p>8 A. Yes. They were paid in the same pay grade.</p> <p>9 Q. What about bars? Do firemen at the City of</p> <p>10 Auburn have pins that they wear that have a</p> <p>11 certain number of bars on them?</p> <p>12 A. I'm aware that there's some insignia that they</p> <p>13 wear.</p> <p>14 Q. Is the insignia that the team leaders wore</p> <p>15 before February 1 of '06 the same as the</p> <p>16 lieutenants wore prior to that time?</p> <p>17 A. I don't know.</p> <p>18 Q. You don't know?</p> <p>19 A. (Witness nods head negatively.)</p> <p>20 Q. Do you know why all these team leaders wanted to</p> <p>21 be reclassified as lieutenants if the job was</p> <p>22 the same and they were making the same money?</p> <p>23 A. I think they stipulated that in their petition.</p>	<p>1 in the Auburn Fire Division to your knowledge?</p> <p>2 A. Gerald Stephens.</p> <p>3 Q. He's the only one, correct?</p> <p>4 A. Yes.</p> <p>5 Q. He's an Afro-American, correct?</p> <p>6 A. He is.</p> <p>7 Q. Are you aware -- How long had he been the only</p> <p>8 lieutenant in the Auburn Fire Division to your</p> <p>9 knowledge?</p> <p>10 A. I don't know.</p> <p>11 Q. And he was appointed or promoted to lieutenant</p> <p>12 back in 1996, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Did you ever hear or have you heard of</p> <p>15 dissatisfaction among the team leaders at that</p> <p>16 time prior to February 1 of '06 that Gerald</p> <p>17 Stephens was the only lieutenant in the</p> <p>18 department?</p> <p>19 A. Can you repeat the question?</p> <p>20 Q. Yeah.</p> <p>21 Did you ever hear or have you ever heard of</p> <p>22 dissatisfaction or discontent among the team</p> <p>23 leaders at that time prior to February 1 of '06</p>
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<p>1 Q. What do you recall that stipulation to be?</p> <p>2 A. I believe they said that team leader is not a</p> <p>3 recognized title in the fire service. When they</p> <p>4 went to other training, they had to explain what</p> <p>5 a team leader was. When they went to other --</p> <p>6 to assist other fire agencies, they had to</p> <p>7 explain what their training was. They preferred</p> <p>8 to be called lieutenants because that was a</p> <p>9 recognized, more traditional job title for a</p> <p>10 company officer in the fire service.</p> <p>11 Q. So from their standpoint -- you would agree with</p> <p>12 me from a convenience standpoint, it was an</p> <p>13 actual promotion from team leader to lieutenant?</p> <p>14 A. I'm sorry?</p> <p>15 Q. From a convenience to the team leaders, it was a</p> <p>16 promotion to go from team leader to lieutenant;</p> <p>17 is that correct?</p> <p>18 MR. MORGAN: Object to the form.</p> <p>19 A. No.</p> <p>20 Q. And you don't know if the insignia had more bars</p> <p>21 as a lieutenant than a team leader?</p> <p>22 A. I don't.</p> <p>23 Q. In February 1 of 2006, who were the lieutenants</p>	<p>1 that Gerald Stephens was the only lieutenant in</p> <p>2 the Auburn Fire Division?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Have you ever heard of that?</p> <p>5 A. Not that I recall.</p> <p>6 Q. Is it your testimony that Gerald Stephens was</p> <p>7 not a higher ranking employee of the City of</p> <p>8 Auburn Fire Division prior to February 1 of '06</p> <p>9 than the team leaders?</p> <p>10 A. I'm sorry. Would you repeat that?</p> <p>11 Q. Is it your testimony that Gerald Stephens was</p> <p>12 not a higher ranking Auburn Fire Division</p> <p>13 employee prior to February 1 of '06 than were</p> <p>14 the team leaders?</p> <p>15 A. That is my testimony.</p> <p>16 MR. MORGAN: Object to the form.</p> <p>17 Q. He was not a higher ranking employee?</p> <p>18 A. He was not.</p> <p>19 Q. I don't want to get into privileged information</p> <p>20 between you and attorneys. You said that you</p> <p>21 consulted with legal counsel prior to the time</p> <p>22 that you reclassified the team leaders to</p> <p>23 lieutenants and decided that the court order had</p>

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<p>1 expired or that it was no longer in force; is</p> <p>2 that correct?</p> <p>3 A. Correct.</p> <p>4 Q. Who was your legal counsel at that time?</p> <p>5 A. The city attorney.</p> <p>6 Q. And was that Arnold Umbach?</p> <p>7 A. It is.</p> <p>8 Q. Anyone else that you or the City consulted with</p> <p>9 in reaching the conclusion that the 1991 order</p> <p>10 had expired or was no longer in force?</p> <p>11 A. Not directly. I don't know if Arnold had --</p> <p>12 Q. Yeah. What I'm saying is: The City came to</p> <p>13 that conclusion based on discussions with legal</p> <p>14 counsel, Arnold Umbach, and that's the only way</p> <p>15 the City came to that conclusion. Is that a</p> <p>16 correct statement?</p> <p>17 A. That's correct.</p> <p>18 Q. And, again, I don't want to know what Arnold</p> <p>19 Umbach told you or anyone else, but do you have</p> <p>20 knowledge as to why Arnold Umbach told the City</p> <p>21 that the 1991 settlement agreement was no longer</p> <p>22 in force?</p> <p>23 A. I do know what he told me.</p>	<p>1 Q. Was it your understanding that after the court</p> <p>2 signed off on the order that they essentially</p> <p>3 lost jurisdiction over what was contained within</p> <p>4 the order? Is that your understanding?</p> <p>5 MR. MORGAN: Object to the form.</p> <p>6 A. That's the information I received.</p> <p>7 Q. So the order was essentially ineffective the day</p> <p>8 after it was signed? Is that your testimony?</p> <p>9 MR. MORGAN: Object to the form.</p> <p>10 A. No.</p> <p>11 Q. Well, what was your understanding of when that</p> <p>12 order became ineffective or when the court lost</p> <p>13 jurisdiction over the contents of that order?</p> <p>14 MR. MORGAN: Object to the form.</p> <p>15 A. It's not something I really contemplated until</p> <p>16 you just asked me this question.</p> <p>17 Q. You don't know -- don't have any knowledge over</p> <p>18 a time -- a date and time when the court lost</p> <p>19 jurisdiction over the 1991 order? Is that your</p> <p>20 testimony?</p> <p>21 MR. MORGAN: Object to the form.</p> <p>22 A. Based on what I was told by the city attorney,</p> <p>23 presumably they did not retain jurisdiction</p>
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<p>1 MR. HORSLEY: Can I ask him that?</p> <p>2 MR. MORGAN: Yeah.</p> <p>3 Q. What did he tell you?</p> <p>4 A. He told us that -- he told me that --</p> <p>5 MR. MORGAN: Let me say this.</p> <p>6 We're --</p> <p>7 MR. HORSLEY: You're not waiving any</p> <p>8 privilege. You're not waiving any</p> <p>9 privilege.</p> <p>10 MR. MORGAN: Okay.</p> <p>11 A. He told me that in the absence of a specific</p> <p>12 termination date, all contracts have -- they</p> <p>13 come to an end based on changing conditions,</p> <p>14 changing situations, that he had learned that</p> <p>15 the court did not retain jurisdiction of this</p> <p>16 settlement and that basically this was a</p> <p>17 contractual matter between the City and the</p> <p>18 plaintiffs.</p> <p>19 Q. Did he tell you when the court no longer</p> <p>20 retained jurisdiction over this?</p> <p>21 A. A point in time?</p> <p>22 Q. Yeah.</p> <p>23 A. No.</p>	<p>1 after the settlement.</p> <p>2 Q. And that was my question a moment ago. Your</p> <p>3 belief today and upon discussing it with Arnold</p> <p>4 Umbach was that essentially the United States</p> <p>5 District Court for the Middle District of</p> <p>6 Alabama Eastern Division lost jurisdiction over</p> <p>7 the order that it entered in 1991 essentially</p> <p>8 the day after it signed the order; is that</p> <p>9 correct?</p> <p>10 MR. MORGAN: Object to the form.</p> <p>11 Q. I think that's what you said.</p> <p>12 A. Not being a lawyer, that's the way it appears.</p> <p>13 MR. MORGAN: Are you at a stopping</p> <p>14 point?</p> <p>15 MR. HORSLEY: Yeah. We can take a</p> <p>16 break. That's fine.</p> <p>17 (Brief recess.)</p> <p>18 Q. (Continuing by Mr. Horsley) I want to go back</p> <p>19 for a moment to the distinction between the team</p> <p>20 leader and lieutenant position prior to February</p> <p>21 1 of 2006. That's when that change became</p> <p>22 effective, correct, when all the team leaders</p> <p>23 became lieutenants?</p>

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<p>1 A. February 1.</p> <p>2 Q. February 1 of 2006?</p> <p>3 A. That's correct.</p> <p>4 Q. Isn't it true that prior to that time, the team</p> <p>5 leader position was a temporary position? It</p> <p>6 was a full-time job but a temporary position; is</p> <p>7 that correct?</p> <p>8 A. My recollection is that it started as a</p> <p>9 temporary position and at some point since 1989</p> <p>10 it became an assignment that didn't go away.</p> <p>11 Q. And weren't the team leaders in some respects</p> <p>12 required to oversee the student firefighters?</p> <p>13 A. They did oversee student firefighters.</p> <p>14 Q. Was that a part of their job duties?</p> <p>15 A. A part of their job duties was to provide</p> <p>16 front-line supervision -- first-line supervision</p> <p>17 over fire suppression personnel.</p> <p>18 Q. Student firefighters?</p> <p>19 A. Student firefighters included, yeah.</p> <p>20 Q. Was that also a job task of the lieutenants</p> <p>21 prior to February 1 of 2006?</p> <p>22 A. I believe lieutenants did oversee student</p> <p>23 firefighters. I don't -- That's my belief.</p>	<p>1 a team leader was to oversee the student</p> <p>2 firefighters?</p> <p>3 A. At one time.</p> <p>4 Q. When?</p> <p>5 A. The late '80s, early '90s.</p> <p>6 Q. So it's your testimony that in 2005, the team</p> <p>7 leaders were no longer required to oversee the</p> <p>8 student firefighters?</p> <p>9 A. I think they oversaw student firefighters and</p> <p>10 also career firefighters.</p> <p>11 Q. And it's your testimony that their job duties</p> <p>12 directly related to student firefighters were</p> <p>13 exactly the same as the lieutenants' job duties</p> <p>14 related to student firefighters; is that</p> <p>15 correct?</p> <p>16 A. The job descriptions were identical.</p> <p>17 Q. With respect to student firefighters?</p> <p>18 A. With respect to supervising personnel.</p> <p>19 Q. Is your testimony that with respect to the</p> <p>20 supervision of student firefighters, the job</p> <p>21 duties of team leader and lieutenant were</p> <p>22 exactly the same prior to February 1 of '06?</p> <p>23 MR. MORGAN: Object to the form.</p>
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<p>1 Q. But wasn't the team leader position specifically</p> <p>2 created in order to oversee the student</p> <p>3 firefighters?</p> <p>4 A. I believe it was.</p> <p>5 Q. Was the lieutenant position ever specifically</p> <p>6 created in order to oversee student</p> <p>7 firefighters?</p> <p>8 A. The lieutenant position existed prior to the</p> <p>9 creation of student firefighters.</p> <p>10 Q. It has never been the primary job task of a</p> <p>11 lieutenant to oversee student firefighters; is</p> <p>12 that correct?</p> <p>13 MR. MORGAN: Object to the form.</p> <p>14 A. Would you repeat that?</p> <p>15 Q. It has never been a primary job duty of a</p> <p>16 lieutenant with the Auburn Fire Division to</p> <p>17 oversee the student firefighters; is that</p> <p>18 correct?</p> <p>19 MR. MORGAN: Object to the form.</p> <p>20 A. I can't agree with that.</p> <p>21 Q. You cannot agree with that?</p> <p>22 A. No.</p> <p>23 Q. Will you agree with me that the primary task of</p>	<p>1 A. That's my belief.</p> <p>2 Q. The City decided through discussions with its</p> <p>3 attorney that the outside assessment center was</p> <p>4 no longer required because the 1991 court order</p> <p>5 was no longer effective with regard to the team</p> <p>6 leader reclassification to lieutenants in</p> <p>7 February 1 of '06. We've established that.</p> <p>8 MR. MORGAN: Object to the form.</p> <p>9 Q. And it sounds to me like you were concerned</p> <p>10 about that or the City was concerned about that</p> <p>11 and actually consulted with its attorney before</p> <p>12 it made that decision to reclassify team leaders</p> <p>13 to lieutenants. Is that a fair statement?</p> <p>14 A. Correct.</p> <p>15 Q. Why, then, were the battalion chief promotions</p> <p>16 at the end of 2005 performed without an outside</p> <p>17 assessment center?</p> <p>18 MR. MORGAN: Do what?</p> <p>19 A. They were.</p> <p>20 Q. The battalion chief promotions in 2005 were?</p> <p>21 MR. MORGAN: Object to the form.</p> <p>22 A. There wasn't a battalion chief promotion in</p> <p>23 2005.</p>

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<p>1 Q. When was the last battalion chief promotion</p> <p>2 before May of '06?</p> <p>3 A. 1996. But back then it was called captain or</p> <p>4 shift commander.</p> <p>5 Q. Were Dean Garrett, Johnny Lawrence, Jimmy Brown,</p> <p>6 and Danny Leverette not promoted to battalion</p> <p>7 chief in 2004 or 2005 to your knowledge?</p> <p>8 A. They were not.</p> <p>9 Q. What is your understanding of their job status</p> <p>10 in 2004 and '05?</p> <p>11 A. At some point during that period of time, their</p> <p>12 job title changed.</p> <p>13 Q. From captain to battalion chief?</p> <p>14 A. From shift commander to battalion chief.</p> <p>15 Q. And it's your testimony that's not a promotion?</p> <p>16 A. That's correct.</p> <p>17 Q. Are you testifying that it's similar to or just</p> <p>18 like the reclassification of team leaders to</p> <p>19 lieutenants, that shift commanders became</p> <p>20 battalion chiefs?</p> <p>21 A. Their job title was changed.</p> <p>22 Q. All shift commanders' job titles were changed to</p> <p>23 battalion chiefs?</p>	<p>1 MR. MORGAN: Object to the form.</p> <p>2 A. I don't know about convenience, but to satisfy</p> <p>3 what they wanted to be called.</p> <p>4 Q. But it's your testimony that was not a</p> <p>5 promotion?</p> <p>6 A. It was not.</p> <p>7 Q. Again, the insignia -- are you familiar with the</p> <p>8 insignia that the shift commanders wore back</p> <p>9 then?</p> <p>10 A. Not until just recently.</p> <p>11 Q. Was that insignia the same as what a battalion</p> <p>12 chief wore?</p> <p>13 MR. MORGAN: Which one?</p> <p>14 MR. HORSLEY: The shift commander.</p> <p>15 A. I have heard there was a change in the jewelry</p> <p>16 that they put on their collars.</p> <p>17 Q. Once they became battalion chiefs, they wore a</p> <p>18 different insignia; is that correct? Once the</p> <p>19 shift commanders became battalion chiefs, the</p> <p>20 individuals we just named; is that correct?</p> <p>21 A. I heard something about there was a bugle added</p> <p>22 to their collar.</p> <p>23 Q. Do you know whether or not the insignia that the</p>
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<p>1 A. Correct.</p> <p>2 Q. And when did that happen?</p> <p>3 A. I think it was in 2004.</p> <p>4 Q. Why did that occur?</p> <p>5 A. The captains/shift commanders had been asking</p> <p>6 that their job titles be changed to battalion</p> <p>7 chief for quite some time. They met with the</p> <p>8 former city manager and requested that their job</p> <p>9 titles be changed. I understand that it was a</p> <p>10 desire that they had because it was a job title</p> <p>11 more in keeping with the fire service, that when</p> <p>12 they went to training or conferences, they</p> <p>13 wanted to introduce themselves as battalion</p> <p>14 chief. They made their petition to the city</p> <p>15 manager, and he agreed to change their job</p> <p>16 title. There was no change in job description.</p> <p>17 There was no change in compensation whatsoever.</p> <p>18 Q. Were those individuals that I just named all</p> <p>19 white men?</p> <p>20 A. Yes.</p> <p>21 Q. And, again, that change was made at their</p> <p>22 request, for lack of a better word, convenience</p> <p>23 to them; is that correct?</p>	<p>1 shift commanders wore included two bars and the</p> <p>2 ones that the battalion chiefs wore included</p> <p>3 three bars?</p> <p>4 A. I don't know that.</p> <p>5 Q. You don't know?</p> <p>6 A. (Witness nods head negatively.)</p> <p>7 Q. Do you have any reason to dispute that if that's</p> <p>8 what --</p> <p>9 MR. MORGAN: Object to the form.</p> <p>10 A. It is what it is.</p> <p>11 Q. But you don't know?</p> <p>12 A. I don't know.</p> <p>13 Q. Once again, the reclassification or retirement</p> <p>14 of -- the reclassification of the shift</p> <p>15 commanders to battalion chiefs was done without</p> <p>16 an outside assessment center, correct?</p> <p>17 MR. MORGAN: Object to the form.</p> <p>18 A. Correct.</p> <p>19 Q. There were no tests given to those individuals,</p> <p>20 correct?</p> <p>21 A. There was no promotion.</p> <p>22 Q. I understand. That's not my question.</p> <p>23 A. There was no test.</p>



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<p>1 Q. There were no tests given to those individuals,</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 MR. MORGAN: Wait a minute. There was</p> <p>5 a test when they were promoted to</p> <p>6 captain or shift commander so</p> <p>7 object to the form of that.</p> <p>8 MR. HORSLEY: I was asking about the</p> <p>9 reclassification. He said it was</p> <p>10 not a promotion. I was asking</p> <p>11 about the reclassification from</p> <p>12 shift commander to battalion</p> <p>13 chief.</p> <p>14 MR. MORGAN: When they were renamed</p> <p>15 from shift commander to battalion</p> <p>16 chief, was there a promotion given</p> <p>17 to rename them? Is that the</p> <p>18 question?</p> <p>19 MR. HORSLEY: No. My question is:</p> <p>20 Was there a test given?</p> <p>21 MR. MORGAN: When they are renamed?</p> <p>22 MR. HORSLEY: Whatever we're calling</p> <p>23 it. When they are reclassified.</p>	<p>1 A. Let me clarify that.</p> <p>2 Q. Okay.</p> <p>3 A. You asked do I have any information?</p> <p>4 Q. Uh-huh (positive response).</p> <p>5 A. I don't recall what -- who made that decision;</p> <p>6 why it was done.</p> <p>7 Q. You'll agree with me that that change from</p> <p>8 captain to shift commander occurred subsequent</p> <p>9 to Plaintiff's Exhibit 3, which is the Hammock</p> <p>10 order approving the settlement agreement,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. Are you aware that that order specifically --</p> <p>14 whether it was effective or not effective, that</p> <p>15 order specifically requires that any promotion</p> <p>16 to captain requires an outside assessment</p> <p>17 center? You're aware of that, right?</p> <p>18 MR. MORGAN: Object to the form.</p> <p>19 A. Yes.</p> <p>20 Q. So it's your testimony that for some reason</p> <p>21 subsequent to this order, the position of</p> <p>22 captain was renamed shift commander, correct?</p> <p>23 A. Correct.</p>
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<p>1 Q. When they became battalion chiefs, they did not</p> <p>2 have to take a test, correct?</p> <p>3 MR. MORGAN: Object to the form.</p> <p>4 A. When their job title was changed from shift</p> <p>5 commander to battalion chief, there was not a</p> <p>6 test given.</p> <p>7 Q. They were not required to undergo an outside</p> <p>8 assessment center pursuant to that change,</p> <p>9 correct?</p> <p>10 A. It was not necessary.</p> <p>11 Q. When did the position of captain change to the</p> <p>12 position of battalion chief?</p> <p>13 A. The position of captain changed to shift</p> <p>14 commander.</p> <p>15 Q. When was that?</p> <p>16 A. Mid-'90s. I don't know.</p> <p>17 Q. Why was that change made?</p> <p>18 A. I don't know that either.</p> <p>19 Q. You don't have any information about why the</p> <p>20 position of captain was changed to shift</p> <p>21 commander?</p> <p>22 A. I don't.</p> <p>23 Q. The order that we've been --</p>	<p>1 Q. And you don't know why; is that correct?</p> <p>2 A. Right.</p> <p>3 Q. It's also your testimony that subsequent to this</p> <p>4 order marked as Exhibit 3 that there was a</p> <p>5 reclassification in 2004 or '05 from shift</p> <p>6 commander to captain -- excuse me -- from</p> <p>7 captain to shift commander and that the captain</p> <p>8 position no longer existed, correct?</p> <p>9 MR. MORGAN: Object to the form.</p> <p>10 A. What date did you say?</p> <p>11 Q. I think we established it was either -- I think</p> <p>12 you said '04. It was in 2004.</p> <p>13 A. I said in '04. I believe in '04 the job title</p> <p>14 changed from shift commander to battalion chief.</p> <p>15 Q. When did it change from -- I'm sorry. That's my</p> <p>16 fault. It was in the mid-'90s that it changed</p> <p>17 from captain to shift commander?</p> <p>18 A. I think so.</p> <p>19 Q. Subsequent to the 1991 order, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Subsequent to that order which specifically</p> <p>22 addresses the outside assessment for captain</p> <p>23 promotions, the captain position was essentially</p>



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<p>1 eliminated by the department, correct?</p> <p>2 MR. MORGAN: Object to the form.</p> <p>3 A. No.</p> <p>4 Q. The title of captain was eliminated by the</p> <p>5 department, correct?</p> <p>6 MR. MORGAN: Object to the form.</p> <p>7 A. Correct.</p> <p>8 Q. You agree with that, the title of captain was</p> <p>9 eliminated subsequent to the order?</p> <p>10 A. It was changed to shift commander.</p> <p>11 (Plaintiff's Exhibits 7 &amp; 8 marked for</p> <p>12 identification.)</p> <p>13 Q. I'll show you what I've marked as Plaintiff's</p> <p>14 Exhibits 5 and 6.</p> <p>15 MR. MORGAN: Richard, we've gone on</p> <p>16 about this, but the change in name</p> <p>17 from team leader to lieutenant is</p> <p>18 not an issue in this case, and I</p> <p>19 don't know why we're spending so</p> <p>20 much time on it. I mean, that's</p> <p>21 not a claim in this lawsuit.</p> <p>22 MR. HORSLEY: I think I'm entitled to</p> <p>23 ask questions about the history of</p>	<p>1 to lieutenants; is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Do you know why these memos or documents were</p> <p>4 given to Gerald Stephens and Christopher Turner?</p> <p>5 A. They were given to all affected members of the</p> <p>6 fire division. They were given to them because</p> <p>7 we wanted their input. We wanted to offer full</p> <p>8 disclosure. And because the city attorney said</p> <p>9 this essentially was a contractual matter</p> <p>10 between the plaintiffs and the City, we felt</p> <p>11 this was a good way to go about getting the</p> <p>12 input regarding their preference as to this</p> <p>13 particular matter.</p> <p>14 Q. The preference to the particular matter of</p> <p>15 reclassifying team leaders to lieutenants?</p> <p>16 A. Changing their job title from team leader to</p> <p>17 lieutenant, reclassifying, yes.</p> <p>18 Q. And Eddie Ogletree would have been one of those</p> <p>19 individuals, correct?</p> <p>20 A. Eddie Ogletree was a team leader who supported</p> <p>21 that decision.</p> <p>22 Q. Well, he signed the document agreeing to it,</p> <p>23 correct?</p>
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<p>1 the department and the changes</p> <p>2 they've made and the motivations</p> <p>3 behind them.</p> <p>4 Q. Have you ever seen Plaintiff's Exhibits 5 and 6?</p> <p>5 (Off-the-record discussion.)</p> <p>6 MR. HORSLEY: I'm marking these as 7</p> <p>7 and 8. Seven is the Proposed</p> <p>8 Modification of Fire Lieutenant</p> <p>9 Promotional process signed by</p> <p>10 Christopher Turner, and 8 is the</p> <p>11 same thing signed by Gerald</p> <p>12 Stephens.</p> <p>13 Q. Have you seen those two documents?</p> <p>14 A. I have.</p> <p>15 Q. And do you recall who made the decision to issue</p> <p>16 these documents to the City of Auburn</p> <p>17 firefighters?</p> <p>18 A. Ultimately it would have been the city manager.</p> <p>19 Q. Who was ...</p> <p>20 A. David Watkins.</p> <p>21 Q. And you'll agree with me that in both of these</p> <p>22 documents -- both of these documents are</p> <p>23 addressing the reclassification of team leaders</p>	<p>1 MR. MORGAN: Object to the form.</p> <p>2 Q. Do you have --</p> <p>3 MR. MORGAN: We have that. We have</p> <p>4 the one that he signed. The</p> <p>5 second he claimed he didn't sign,</p> <p>6 yeah, we've got it.</p> <p>7 A. He stated: I agree with the proposal.</p> <p>8 Q. And did you witness Mr. Ogletree sign that</p> <p>9 document?</p> <p>10 A. No.</p> <p>11 Q. Do you know if the first page was attached to it</p> <p>12 when he signed it?</p> <p>13 A. No.</p> <p>14 Q. Even though you had certain members of the fire</p> <p>15 department that disagreed with the</p> <p>16 reclassification, the City did it anyway,</p> <p>17 correct?</p> <p>18 A. After we met with those individuals to</p> <p>19 understand their concerns.</p> <p>20 Q. And in both 7 and 8, it states that the</p> <p>21 court-approved assessment center process</p> <p>22 submitted for fire lieutenant will be considered</p> <p>23 to have expired, correct?</p>

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<p>1 A. Correct.</p> <p>2 Q. That's in paragraph 1 at the bottom of the first</p> <p>3 page; is that correct?</p> <p>4 A. That's correct.</p> <p>5 Q. If it was your position and the City's position</p> <p>6 at that time that, number one, the settlement</p> <p>7 order was no longer in effect and that this was</p> <p>8 not a promotion -- it was simply a</p> <p>9 reclassification -- why are you addressing the</p> <p>10 outside assessment center required by the order</p> <p>11 in these two documents?</p> <p>12 MR. MORGAN: Object to the form.</p> <p>13 Q. I mean, if it's not an issue because it's not a</p> <p>14 promotion and the order is not in force anyway,</p> <p>15 why do you have to send out this document for</p> <p>16 people to sign that specifically addresses the</p> <p>17 assessment center and the fact that you consider</p> <p>18 it to have expired?</p> <p>19 MR. MORGAN: Object to the form.</p> <p>20 A. Because --</p> <p>21 MR. MORGAN: The document speaks for</p> <p>22 itself.</p> <p>23 Q. Go ahead.</p>	<p>1 A. After we met with them to understand what their</p> <p>2 concerns were.</p> <p>3 Q. If February 1 of 2006 the City had decided the</p> <p>4 order was no longer in effect and outside</p> <p>5 assessment centers were not required, why was an</p> <p>6 outside assessment center used or why was it</p> <p>7 allegedly used for the battalion chief promotion</p> <p>8 in May of 2006?</p> <p>9 MR. MORGAN: Object to the form.</p> <p>10 A. In regard to the --</p> <p>11 Q. Well, let me ask you this. Is it your position</p> <p>12 that an outside assessment center that complies</p> <p>13 with the court order of 1991 was, in fact,</p> <p>14 utilized for the 2006 battalion chief promotion?</p> <p>15 MR. MORGAN: Object to the form.</p> <p>16 A. Yes.</p> <p>17 Q. Why did the City feel it necessary to use the</p> <p>18 outside assessment center for the battalion</p> <p>19 chief promotion in 2006 if it was the City's</p> <p>20 position that the order was no longer in effect?</p> <p>21 MR. MORGAN: Object to the form.</p> <p>22 A. As I've indicated previously, this matter</p> <p>23 regarding the team leaders being changed in job</p>
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<p>1 A. Because the city attorney said this was</p> <p>2 essentially a contractual matter between the</p> <p>3 plaintiffs and the City, and we were trying to</p> <p>4 provide full disclosure as to what the</p> <p>5 implications of this proposal meant before we</p> <p>6 moved forward.</p> <p>7 Q. But your earlier testimony made it very clear</p> <p>8 this was not a promotion, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Then why are you required to send out documents</p> <p>11 asking for the approval when this is not a</p> <p>12 promotion? It's simply a reclassification.</p> <p>13 MR. MORGAN: Object to the form.</p> <p>14 Asked and answered.</p> <p>15 Q. Is there a reason why you felt you needed to</p> <p>16 send out these documents if this was not a</p> <p>17 promotion?</p> <p>18 A. We were concerned that if we didn't take this</p> <p>19 step, understand their preferences, then it</p> <p>20 would potentially invalidate moving them from</p> <p>21 team leader to lieutenant.</p> <p>22 Q. And even though some people disagreed with it,</p> <p>23 y'all went ahead and reclassified them, correct?</p>	<p>1 title to lieutenant was very narrowly focused on</p> <p>2 in regard to the settlement agreement. We did</p> <p>3 not address the issue of assessment center</p> <p>4 processes or the process for promotion to</p> <p>5 battalion chief or captain or shift commander,</p> <p>6 whatever you want to call it, in this effort or</p> <p>7 in this initiative presented to us by the team</p> <p>8 leaders.</p> <p>9 Q. Are you familiar with somebody named Stephanie</p> <p>10 King?</p> <p>11 A. I am.</p> <p>12 Q. Who is she?</p> <p>13 A. She is our senior HR generalist.</p> <p>14 Q. Still?</p> <p>15 A. She is.</p> <p>16 (Plaintiff's Exhibit 5 marked for</p> <p>17 identification.)</p> <p>18 Q. Let me show you what I've marked as Plaintiff's</p> <p>19 Exhibit 5. This has just been provided to me</p> <p>20 today. It's a series of e-mails, some of which</p> <p>21 you sent, some of which you received, some</p> <p>22 Mr. Lamar sent, received. Take a look at those,</p> <p>23 and I'm going to ask you a couple of questions</p>

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1 about them.

2 MR. MORGAN: Where did you get this

3 document?

4 MR. HORSLEY: From Will Hancock.

5 MR. HANCOCK: That's what I sent you,

6 Randall. Those are the e-mails

7 you requested I think after

8 Mr. Turner's deposition. I sent

9 them the following week.

10 Q. Have you seen that exhibit before?

11 A. I have.

12 Q. The only question I'm going to ask you is: Does

13 it appear to be an accurate reflection of

14 e-mails that were sent between the City of

15 Auburn employees and CWH representatives about

16 the battalion chief promotion test and

17 assessment center?

18 MR. MORGAN: Object to the form.

19 A. No.

20 Q. It does not? How is it not e-mails sent --

21 A. Well, chronologically I'm puzzled by how I got

22 this e-mail at 1:51. I responded at 2:55. Lee

23 Lamar responded at 2:07. I don't understand how

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1 that happens, how he responded after me or --

2 before me, but it chronologically appears that

3 he responded after me.

4 Q. So you say there's a contradiction in two of the

5 times when e-mails were apparently sent; is that

6 correct?

7 A. I don't understand why that is. There's a

8 question in my mind about that.

9 Q. Do you agree with me that these e-mails were

10 sent? Have you seen these e-mails?

11 A. I believe -- Well, I saw them after Mr. Hancock

12 provided them.

13 Q. Do you dispute that these e-mails exist?

14 A. No.

15 Q. Do you agree that the e-mails that have your

16 name on them as being sent by you were sent by

17 you?

18 A. Yes.

19 Q. Did you receive the e-mails that indicate that

20 you received them on this document?

21 A. I believe I did.

22 Q. Do you believe that Lee Lamar sent the e-mails

23 that his name is on?

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1 A. This document would suggest that.

2 Q. The battalion chief promotion that we're talking

3 about and that actually occurred in May of 2006,

4 that was a promotion, correct, from -- for

5 anyone that applied for it; is that correct?

6 A. Correct.

7 Q. Or for anyone who actually received the job,

8 that was a promotion, correct?

9 A. Correct.

10 Q. It was a promotion in rank and pay; is that

11 correct?

12 A. Correct.

13 Q. And you'll agree with me that Mr. Stephens and

14 Mr. Ogletree and Mr. Turner did not receive that

15 promotion, correct?

16 A. Correct.

17 Q. And you'll agree with me that those are each

18 Afro-Americans, correct?

19 A. Correct.

20 Q. And you'll agree with me those are the only

21 Afro-Americans that applied for the battalion

22 chief promotion at that time, correct?

23 A. Correct.

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1 Q. You'll agree with me that the only people who

2 did receive that promotion were white men,

3 correct?

4 A. Correct.

5 Q. You'll agree with me that the only people who

6 made it past the testing phase of that promotion

7 were white men, correct?

8 MR. MORGAN: Object to the form.

9 A. Correct.

10 Q. The testing phase meaning the test that was

11 taken with the 70 cutoff score, correct?

12 A. The written test.

13 Q. Yes. The only people that made it past that

14 point were white, correct?

15 A. Correct.

16 Q. Are you familiar with Mr. Stephens' and

17 Mr. Ogletree's job history with the City of

18 Auburn?

19 A. Yes.

20 Q. You're familiar with the jobs they've held and

21 their work performance. Is that a fair

22 statement?

23 A. Yes.

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<p>1 Q. Other than their not passing the written test,</p> <p>2 are you aware of anything about their employment</p> <p>3 history with the City of Auburn that would have</p> <p>4 kept them from being promoted to battalion</p> <p>5 chief?</p> <p>6 MR. MORGAN: Object to the form.</p> <p>7 A. They had the same opportunity that everyone else</p> <p>8 did.</p> <p>9 Q. Right. My question though, is: There's not</p> <p>10 something that you're aware of that would have</p> <p>11 precluded them from that promotion but for not</p> <p>12 passing that test; is that correct?</p> <p>13 MR. MORGAN: Object to the form. Go</p> <p>14 ahead.</p> <p>15 A. Correct. They were eligible, just like everyone</p> <p>16 else.</p> <p>17 Q. But for not passing that test, is it your</p> <p>18 testimony that they were qualified to receive</p> <p>19 that promotion?</p> <p>20 MR. MORGAN: Object to the form.</p> <p>21 A. That is not my testimony.</p> <p>22 Q. Based on their time in grade, based upon their</p> <p>23 seniority, based upon your knowledge of their</p>	<p>1 A. They were eligible.</p> <p>2 Q. They were not disqualified for that promotion?</p> <p>3 A. Correct.</p> <p>4 Q. Who ultimately received those promotions to</p> <p>5 battalion chief? I'll try to help you. I think</p> <p>6 it was Joe Lovvorn, Rod Hartsfield, Matt Jordan,</p> <p>7 and Joey Darby.</p> <p>8 A. That's correct.</p> <p>9 Q. Is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Those were all white males, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Would you disagree with me that at the time of</p> <p>14 his promotion to battalion chief, Joe Lovvorn</p> <p>15 had been with the Auburn Fire Division for</p> <p>16 approximately five to six years?</p> <p>17 A. I don't know exactly.</p> <p>18 Q. Do you have any reason to disagree with that?</p> <p>19 MR. MORGAN: Well, the record speaks</p> <p>20 for itself.</p> <p>21 Q. Do you have any reason to disagree with that?</p> <p>22 MR. MORGAN: Object to the form.</p> <p>23 A. Does that include his time as a student</p>
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<p>1 work ethic and yearly evaluations, do you have</p> <p>2 an opinion one way or the other about whether</p> <p>3 they were qualified to be battalion chiefs?</p> <p>4 MR. MORGAN: Object to the form.</p> <p>5 A. First, time in grade and seniority were not</p> <p>6 considered.</p> <p>7 Q. Why is that?</p> <p>8 A. How do you consider that?</p> <p>9 Q. I don't know.</p> <p>10 A. Exactly.</p> <p>11 Q. I mean, I guess you consider it by how long</p> <p>12 somebody has been there and how long they've</p> <p>13 been in a certain position. You're saying that</p> <p>14 was not a qualification obviously for the</p> <p>15 battalion chief job? Is that what you're</p> <p>16 saying?</p> <p>17 A. Correct.</p> <p>18 Q. My question, though, was: Other than them not</p> <p>19 passing the test, based upon their work history</p> <p>20 with the City of Auburn, were they qualified for</p> <p>21 that promotion?</p> <p>22 MR. MORGAN: Object to the form.</p> <p>23 Asked and answered.</p>	<p>1 firefighter?</p> <p>2 Q. No.</p> <p>3 A. I think --</p> <p>4 Q. He's been full-time employed with the City of</p> <p>5 Auburn five to six years to your knowledge?</p> <p>6 A. As a regular firefighter?</p> <p>7 Q. Yes.</p> <p>8 A. I don't have any reason to disbelieve that</p> <p>9 that's true.</p> <p>10 MR. MORGAN: Object to the form on</p> <p>11 that question.</p> <p>12 Q. Do you believe that Rod Hartsfield had been with</p> <p>13 the Auburn Fire Department for approximately</p> <p>14 seven years at the time he was promoted to</p> <p>15 battalion chief?</p> <p>16 MR. MORGAN: Object to the form.</p> <p>17 A. As a regular employee?</p> <p>18 Q. Yes, sir.</p> <p>19 A. I have no reason to disbelieve that's not true.</p> <p>20 Q. Matt Jordan, five to six years with the Auburn</p> <p>21 Fire Division; is that --</p> <p>22 MR. MORGAN: Object to the form.</p> <p>23 A. Same stipulation.</p>

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1 Q. And the same question with Joey Darby.	1 were promoted?
2 MR. MORGAN: Object to the form.	2 MR. MORGAN: Promoted to battalion
3 A. Same stipulation.	3 chief?
4 Q. Do you agree with me that Mr. Stephens and	4 MR. HORSLEY: Yes.
5 Mr. Ogletree both had more years of service with	5 A. They were in that group.
6 the Auburn Fire Department than any of the	6 Q. Each of the individuals that were promoted to
7 individuals that were promoted to battalion	7 battalion chief in May of '06 were in the same
8 chief?	8 group of individuals that were reclassified from
9 A. I believe that's true.	9 team leader to lieutenant in February 1 of '06,
10 Q. Do you agree with me that both Mr. Stephens and	10 correct?
11 Mr. Ogletree had more experience with the Auburn	11 A. Correct.
12 Fire Department than did the individuals that	12 Q. So how long had they been lieutenants at the
13 received the battalion chief promotion?	13 time that they were promoted to battalion
14 MR. MORGAN: Object to the form.	14 chiefs?
15 A. They had worked -- To the extent that they had	15 A. They had held the job title of lieutenant from
16 been employed longer, ostensibly they had worked	16 February 1, 2006.
17 more shifts than these others.	17 Q. So --
18 Q. So they had more experience?	18 A. They had been company officers, as I understand
19 MR. MORGAN: Object to the form.	19 that term in the fire service, for significantly
20 Q. Is that correct?	20 longer than that.
21 MR. MORGAN: What do you mean by	21 Q. So they had been lieutenants for four months
22 experience?	22 approximately; is that correct?
23 MR. HORSLEY: Experience as Auburn	23 A. Correct.
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1 firefighters working for the	1 Q. Since they had not been lieutenants for twelve
2 Auburn Fire Department.	2 months, would they have not been probationary
3 MR. MORGAN: Are you talking about	3 lieutenants at the time that they were promoted
4 seniority?	4 to battalion chiefs?
5 MR. HORSLEY: No. Seniority is just a	5 A. No.
6 number of years. I'm talking	6 Q. They were not?
7 about experience going out and	7 A. They were not probationary.
8 working for the City of Auburn.	8 Q. Why not?
9 Q. Did they have more experience than the people	9 A. Because we made a title change from team leader
10 that were promoted to battalion chief?	10 to lieutenant. They had already satisfied any
11 MR. MORGAN: Object to the form.	11 probationary requirements.
12 A. They had more experience as employees of the	12 Q. So it's your testimony that even though they had
13 City of Auburn to the extent that they had been	13 only been lieutenants for approximately four
14 employed longer.	14 months, they were nonprobationary lieutenants
15 Q. What jobs with the City of Auburn did the	15 and entitled to be promoted to battalion chiefs,
16 individuals that were promoted to battalion	16 correct?
17 chief hold immediately before they were	17 A. Correct. For the sake of argument, even if they
18 promoted?	18 had been probationary, they would have been
19 A. I think they were all lieutenants.	19 eligible.
20 Q. Lieutenants?	20 Q. Doesn't that conflict with the City of Auburn
21 A. (Witness nods head positively.)	21 personnel policies?
22 Q. Were they in the group that was reclassified	22 A. Not that I'm aware of.
23 from team leaders to lieutenants, the ones that	23 Q. Are you familiar with those policies?

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<p>1 A. I am.</p> <p>2 Q. You are? Are you familiar with Section 2.07 of</p> <p>3 the City of Auburn personnel policies from</p> <p>4 1999? I've marked the whole document as</p> <p>5 Plaintiff's Exhibit Number 9.</p> <p>6 (Plaintiff's Exhibit 9 marked for</p> <p>7 identification.)</p> <p>8 MR. MORGAN: Is that what was in</p> <p>9 effect in 2006?</p> <p>10 MR. HORSLEY: I don't know.</p> <p>11 Q. Was it?</p> <p>12 A. No.</p> <p>13 Q. What was in effect?</p> <p>14 A. The personnel policies of 2005 as amended.</p> <p>15 Q. Okay. Look at Section 2.07 of that section and</p> <p>16 read it, if you will.</p> <p>17 A. In the document, the City of Auburn personnel</p> <p>18 policies of 1999 labeled such, Section 2.07,</p> <p>19 probation, states: The probationary period --</p> <p>20 Did you want me to read this out loud?</p> <p>21 Q. No. Just read it to yourself, and I'm going to</p> <p>22 ask you a question about it.</p> <p>23 A. (Witness complies.)</p>	<p>1 A. 2.07?</p> <p>2 Q. Yes, sir.</p> <p>3 A. It does not say you can't be promoted during the</p> <p>4 probationary period.</p> <p>5 MR. MORGAN: I didn't see it either.</p> <p>6 Show it.</p> <p>7 Q. I'm sorry. Section 2.09 regarding promotions</p> <p>8 refers back to Section 2.07. Does that section</p> <p>9 not say an employee is not entitled to a</p> <p>10 promotion until he has served a twelve-month</p> <p>11 probationary period?</p> <p>12 MR. MORGAN: Object to the form.</p> <p>13 A. No.</p> <p>14 Q. It refers to a step increase in pay, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Does it not state that an increase in pay</p> <p>17 requires an employee to serve a probationary</p> <p>18 period of twelve months?</p> <p>19 MR. MORGAN: Object to the form.</p> <p>20 A. A step increase -- I'm sorry. Repeat the</p> <p>21 question.</p> <p>22 Q. Does that not mean -- Section 2.09 which refers</p> <p>23 back to 2.07, does that not mean an employee has</p>
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<p>1 Q. Was that section still in effect with the</p> <p>2 amended personnel policies of '05 to your</p> <p>3 knowledge?</p> <p>4 A. To my knowledge it was.</p> <p>5 Q. Does that section not require that a fire</p> <p>6 department employee be employed at a certain job</p> <p>7 for twelve months before being entitled to a</p> <p>8 promotion?</p> <p>9 A. When an employee --</p> <p>10 MR. MORGAN: Object to the form. Go</p> <p>11 ahead.</p> <p>12 A. When an employee is promoted -- When an employee</p> <p>13 is hired or promoted into a new job, they serve</p> <p>14 a probationary period.</p> <p>15 Q. Of twelve months?</p> <p>16 A. Of twelve months.</p> <p>17 Q. And they can't be promoted while they are in</p> <p>18 that probationary period, is that correct,</p> <p>19 according to the city personnel policies?</p> <p>20 A. No, that is not correct.</p> <p>21 Q. That's not correct?</p> <p>22 A. No.</p> <p>23 Q. 2.7 does not say that?</p>	<p>1 to serve a twelve-month probationary period</p> <p>2 before he can receive a step increase in pay?</p> <p>3 A. In that job, correct.</p> <p>4 Q. So it's your testimony that there's no</p> <p>5 requirement through the City of Auburn personnel</p> <p>6 policies that an employee serve a twelve-month</p> <p>7 probationary period before they can be promoted?</p> <p>8 A. If a firefighter wanted to apply for a higher</p> <p>9 level job within the organization during their</p> <p>10 probationary period as a firefighter, they could</p> <p>11 certainly do so. And if selected they would be</p> <p>12 promoted to that position.</p> <p>13 Q. And it's your testimony that would not</p> <p>14 contradict or conflict in any way with the</p> <p>15 personnel policies marked as Plaintiff's Exhibit</p> <p>16 9; is that correct?</p> <p>17 A. It would not.</p> <p>18 Q. I think I asked this earlier, but I forgot what</p> <p>19 your answer was. Is it your testimony that the</p> <p>20 individuals that were promoted to battalion</p> <p>21 chief in May of '06 were, in fact, probationary</p> <p>22 lieutenants?</p> <p>23 MR. MORGAN: Object to the form.</p>



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<p>1 A. That was not my testimony.</p> <p>2 MR. HORSELY: That's why I asked it</p> <p>3 again because I couldn't remember</p> <p>4 what his answer was.</p> <p>5 Q. What was your testimony?</p> <p>6 A. My testimony was that they were not</p> <p>7 probationary. They had received -- I'm sorry.</p> <p>8 Repeat which question --</p> <p>9 Q. Yeah. Were they non --</p> <p>10 A. Which job?</p> <p>11 Q. Is it your testimony that those individuals that</p> <p>12 received the battalion chief promotion were</p> <p>13 probationary or nonprobationary lieutenants at</p> <p>14 the time of the promotion to battalion chief?</p> <p>15 A. They were nonprobationary lieutenants when they</p> <p>16 were promoted.</p> <p>17 Q. And, again, they had only been lieutenants for</p> <p>18 approximately four months, correct?</p> <p>19 MR. MORGAN: Object to the form.</p> <p>20 A. They had held the job title of lieutenant for --</p> <p>21 since February 1, 2006.</p> <p>22 Q. Are you familiar with how many Afro-Americans</p> <p>23 or -- Let's say minorities.</p>	<p>1 A. No.</p> <p>2 Q. Do you have any knowledge or information that it</p> <p>3 would be more than two?</p> <p>4 MR. MORGAN: Object to the form.</p> <p>5 A. I don't know if there have been more than two</p> <p>6 regular minority firefighters hired since 2000</p> <p>7 or ...</p> <p>8 Q. Since 1991.</p> <p>9 A. 1991. Sorry.</p> <p>10 Q. Do you know if there's been more than four</p> <p>11 minority firefighters hired since 1991?</p> <p>12 MR. MORGAN: Object to the form.</p> <p>13 A. No.</p> <p>14 Q. And how many minority firefighters are employed</p> <p>15 with the City right now? Let's say regular</p> <p>16 firefighters first, full-time firemen.</p> <p>17 A. Three.</p> <p>18 Q. And that's Chris Turner, Gerald Stephens, and</p> <p>19 Eddie Ogletree, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And how many student firefighters are there,</p> <p>22 minority student firefighters?</p> <p>23 A. Right now?</p>
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<p>1 Are you familiar with how many minorities</p> <p>2 the City of Auburn Fire Department has hired</p> <p>3 since the year 2004?</p> <p>4 A. Off the top of my head, no.</p> <p>5 Q. Are you aware that they've hired any?</p> <p>6 A. I believe that they have hired student</p> <p>7 firefighters that were minorities.</p> <p>8 Q. Student firefighters?</p> <p>9 A. Yes.</p> <p>10 Q. Are you aware of any full-time firemen that the</p> <p>11 City has hired since 2000, minority firemen?</p> <p>12 A. Not to my knowledge.</p> <p>13 Q. And, again, I may be taxing your memory -- and</p> <p>14 it's fine if you don't know the answer to this</p> <p>15 question -- but since 1991, since the order was</p> <p>16 entered, are you aware of how many minorities</p> <p>17 the City of Auburn has hired as full-time</p> <p>18 firemen?</p> <p>19 A. As regular --</p> <p>20 Q. Yes, sir.</p> <p>21 A. -- firemen?</p> <p>22 No.</p> <p>23 Q. You don't know?</p>	<p>1 Q. Uh-huh (positive response).</p> <p>2 MR. MORGAN: How many?</p> <p>3 MR. HORSLEY: He said "right now". He</p> <p>4 hasn't answered yet.</p> <p>5 A. I think it's one or two.</p> <p>6 Q. Did Chief Langley or Lamar, either one of those</p> <p>7 gentlemen, ever make the statement to you that</p> <p>8 the City of Auburn needed to hire more minority</p> <p>9 firefighters?</p> <p>10 A. Yes.</p> <p>11 Q. Let's start with Langley first. When has he</p> <p>12 made that statement to you?</p> <p>13 A. I can't tell you a specific time, but it's been</p> <p>14 a matter of concern for quite a while that we</p> <p>15 have not been able to attract and hire</p> <p>16 minorities into the fire division.</p> <p>17 Q. And Lamar has said that to you as well?</p> <p>18 A. Yes.</p> <p>19 Q. It's your position that the City wants to hire</p> <p>20 more minorities, but there's been no interest</p> <p>21 from minorities to be firefighters with the City</p> <p>22 of Auburn?</p> <p>23 A. That's not my testimony.</p>

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<p>1 Q. What is your testimony?</p> <p>2 A. We have not -- For one reason or another, either</p> <p>3 through not getting applications or not being</p> <p>4 ranked as number one in the selection process or</p> <p>5 for people -- Well, I've already said lack of</p> <p>6 applications.</p> <p>7 It's for those two reasons we've not been</p> <p>8 able to develop a strong minority presence in</p> <p>9 the fire division.</p> <p>10 Q. Are you familiar with two student firefighters</p> <p>11 by the name of Jeremy Patterson and William</p> <p>12 Thompkins?</p> <p>13 A. I know them. I know their names. I don't know</p> <p>14 them.</p> <p>15 Q. Did they apply for full-time employment with the</p> <p>16 City of Auburn Fire Department?</p> <p>17 A. I don't think they did.</p> <p>18 Q. So you don't know one way or the other whether</p> <p>19 or not they applied with the City of Auburn for</p> <p>20 full-time employment?</p> <p>21 A. One of them did not.</p> <p>22 Q. Which one?</p> <p>23 A. I want to say it was Thompkins.</p>	<p>1 members of the fire department to be promoted to</p> <p>2 battalion chief?</p> <p>3 A. I think there was some discussion that the way</p> <p>4 the test was structured, which incorporated</p> <p>5 situational judgment questions, that that would</p> <p>6 help employees that had been with the</p> <p>7 organization longer to exercise that knowledge</p> <p>8 that they had gained based on experience and</p> <p>9 familiarity with the policies, that that would</p> <p>10 give -- that that would help them in the testing</p> <p>11 process.</p> <p>12 Q. So your testimony is that y'all had some</p> <p>13 discussions about how the test would actually</p> <p>14 help the older members of the fire department;</p> <p>15 is that correct?</p> <p>16 A. Actually, I think that was something that CWH</p> <p>17 told us.</p> <p>18 Q. Well, my question was: Do you recall any</p> <p>19 discussions between you and those gentlemen</p> <p>20 about whether or not the test requirement would</p> <p>21 make it more difficult for the older members of</p> <p>22 the department to receive that promotion?</p> <p>23 MR. MORGAN: Object to the form.</p>
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<p>1 And what was the other?</p> <p>2 Q. Jeremy Patterson.</p> <p>3 A. I don't think Jeremy Patterson applied.</p> <p>4 Q. But Thompkins did?</p> <p>5 A. I don't recall that he did.</p> <p>6 Q. If he did, you'll agree with me he was not</p> <p>7 hired, correct?</p> <p>8 MR. MORGAN: Object to the form.</p> <p>9 A. Correct.</p> <p>10 Q. Leading up to the battalion chief promotion in</p> <p>11 May of 2006 when you and Langley and Lamar and</p> <p>12 the public safety director were discussing that</p> <p>13 promotion, do you recall any discussion about</p> <p>14 whether or not the test would make it more</p> <p>15 difficult for minorities to be promoted to</p> <p>16 battalion chief?</p> <p>17 A. No.</p> <p>18 Q. That was not discussed, is that correct, at</p> <p>19 least when you were present?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Do you recall any discussion among those</p> <p>22 individuals and you about whether or not the</p> <p>23 test would make it more difficult for the older</p>	<p>1 A. No.</p> <p>2 Q. You don't recall?</p> <p>3 A. No.</p> <p>4 Q. Do you recall the education levels of the four</p> <p>5 individuals that received the battalion chief</p> <p>6 promotion?</p> <p>7 A. I think I do.</p> <p>8 Q. Can you tell me?</p> <p>9 A. I think they've all got college degrees.</p> <p>10 Q. Are you aware of whether Mr. Ogletree and</p> <p>11 Mr. Stephens had college degrees at the time</p> <p>12 they applied for battalion chief promotion?</p> <p>13 A. I don't think that they had completed their</p> <p>14 college education.</p> <p>15 Q. Had they been out of school -- formal school for</p> <p>16 a much longer period than the individuals that</p> <p>17 were promoted to battalion chief to your</p> <p>18 knowledge?</p> <p>19 A. To my knowledge, yes.</p> <p>20 Q. Do you agree with me that someone who is closer</p> <p>21 to being out of school than further away from</p> <p>22 being out of school might be a better test</p> <p>23 taker?</p>

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<p>1 MR. MORGAN: Object to the form.</p> <p>2 Q. Standard test taker?</p> <p>3 MR. MORGAN: Object to the form.</p> <p>4 A. That would seem plausible.</p> <p>5 Q. Will you agree with me that the individuals who</p> <p>6 had been out of school for a lesser period of</p> <p>7 time than the older individuals had an advantage</p> <p>8 in taking the cutoff test for the battalion</p> <p>9 chief promotion?</p> <p>10 MR. MORGAN: Object to the form.</p> <p>11 A. No.</p> <p>12 Q. You would not agree with that?</p> <p>13 A. No.</p> <p>14 Q. Would you agree with me that someone with a</p> <p>15 college education would have an advantage over</p> <p>16 someone without a college education in taking</p> <p>17 the cutoff score test for battalion chief</p> <p>18 promotion?</p> <p>19 MR. MORGAN: Object to the form.</p> <p>20 A. Not based on a cutoff score.</p> <p>21 Q. Well, just the test, then.</p> <p>22 A. I think that they would --</p> <p>23 MR. MORGAN: Object to the form.</p>	<p>1 So this document was something that the City</p> <p>2 had and looked at and used, correct?</p> <p>3 MR. MORGAN: Object to the form.</p> <p>4 A. For the promotions --</p> <p>5 MR. MORGAN: Is there a special</p> <p>6 provision in there on hiring?</p> <p>7 MR. HORSLEY: He said it.</p> <p>8 A. In regard to the promotion processes for</p> <p>9 lieutenant and captain.</p> <p>10 MR. MORGAN: Object to the form.</p> <p>11 Q. Will you agree with me that the promotional</p> <p>12 process for battalion chief in May of '06</p> <p>13 consisted of the following: It consisted of a</p> <p>14 cutoff test and then the exercises that were</p> <p>15 implemented by CWH, and that was essentially it;</p> <p>16 is that correct?</p> <p>17 MR. MORGAN: Why do we keep using May</p> <p>18 of '06? Didn't they take this</p> <p>19 written test in April?</p> <p>20 Q. Didn't the promotion occur in May? If I've used</p> <p>21 May incorrectly, I stand corrected.</p> <p>22 A. I don't remember the exact date.</p> <p>23 Q. We're talking about the battalion chief</p>
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<p>1 A. -- it's logical that somebody that has more</p> <p>2 formal education is going to do better on a</p> <p>3 test. And all of our employees have abundant</p> <p>4 opportunities to pursue education through the</p> <p>5 tuition reimbursement program, in particular,</p> <p>6 through courses that we send them to for</p> <p>7 training.</p> <p>8 MR. MORGAN: Can we take another quick</p> <p>9 break?</p> <p>10 MR. HORSLEY: Yeah.</p> <p>11 (Brief recess.)</p> <p>12 Q. (Continuing by Mr. Horsley) We've talked about</p> <p>13 the order of approving settlement agreement,</p> <p>14 Plaintiff's Exhibit 3, and you've read it. Will</p> <p>15 you agree with me that at least for a period of</p> <p>16 time, however long that was, the City did use</p> <p>17 this settlement agreement pursuant to its</p> <p>18 policies and procedures with regard to hiring</p> <p>19 minorities?</p> <p>20 MR. MORGAN: Object to the form.</p> <p>21 Q. Is that correct?</p> <p>22 A. Yes. To any hiring.</p> <p>23 Q. To any hiring.</p>	<p>1 promotion in '06. Okay?</p> <p>2 A. Okay.</p> <p>3 Q. The process, you'll agree with me, did not</p> <p>4 include the consideration of seniority, correct?</p> <p>5 A. Correct.</p> <p>6 Q. It didn't include the consideration of time in</p> <p>7 grade, correct?</p> <p>8 A. Correct.</p> <p>9 Q. It didn't include the consideration of work</p> <p>10 experience, correct?</p> <p>11 MR. MORGAN: Object to the form.</p> <p>12 A. Not directly.</p> <p>13 Q. It included essentially a cutoff test that was</p> <p>14 the first thing you had to do in order to be</p> <p>15 considered to be promoted to battalion chief,</p> <p>16 correct?</p> <p>17 MR. MORGAN: Object to the form.</p> <p>18 A. It utilized a job-related test with a cutoff</p> <p>19 score to advance further in the process.</p> <p>20 Q. And you'll agree with me that that was the first</p> <p>21 step in the process. And if you did not pass</p> <p>22 that test, you were not allowed to progress in</p> <p>23 the process regardless of seniority, regardless</p>

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<p>1 of work experience, regardless of time in grade, 2 correct? 3 MR. MORGAN: Object to the form. 4 Q. Is that correct? 5 MR. MORGAN: Object to the form. 6 A. It is correct. 7 Q. That process -- Who developed that process to 8 your knowledge? 9 A. The overall process? 10 Q. Uh-huh (positive response). The process y'all 11 used for that specific promotion. 12 A. That process was developed by CWH in 13 consultation with the City of Auburn, the 14 employees that you've listed there. 15 Q. Do you know if that process itself, the entire 16 process, for the promotion has ever been 17 scientifically validated to not have a disparate 18 or negative impact on Afro-Americans? 19 MR. MORGAN: Object to the form. 20 A. That particular process could not -- 21 MR. MORGAN: Go ahead. I object to 22 the form. You go ahead. 23 A. That particular process could not have been</p>	<p>1 represents in their literature that their 2 process results in valid job-related 3 selections. That particular process could not 4 have been after the fact -- Well, any analysis 5 of it in terms of adverse impact would occur 6 after the fact so it could not have been done 7 before the fact. But following professional 8 standards of test development and CWH's 9 representation that the exercises are a neutral 10 job-related method of making selections, I would 11 say that it was scientifically validated. 12 Q. Just so we're clear, you understand what I'm 13 saying when I say disparate impact; is that 14 correct? 15 A. I do. 16 Q. But you've already testified that the City made 17 the ultimate decision about having the test as 18 the first factor of the process and the cutoff 19 score, correct? 20 MR. MORGAN: Wait a minute. Here's 21 the problem. You've asked him the 22 question about the entire process, 23 and then when he answered it, you</p>
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<p>1 scientifically validated because it had not been 2 done. However, it used the EEOC uniform 3 guidelines and other professional standards of 4 test development such that there was assurance 5 that it had content -- that it was content 6 validated. 7 Q. You're talking about the test itself. 8 A. I'm talking about the test itself. 9 Q. We're not exactly on the same page. I'm talking 10 about the entire process for the promotion of 11 battalion chief. The test was a component of 12 that. You'll agree with me, correct? 13 A. Correct. 14 Q. And the test may have been scientifically 15 validated by CWH, correct? 16 A. Correct. 17 Q. What I'm asking you is: Did the City of Auburn 18 take the entire process with the test as a 19 component of that process and have it 20 scientifically validated not to have a disparate 21 impact on Afro-Americans? 22 MR. MORGAN: Object to the form. 23 A. Let me try to answer that in this way. CWH</p>	<p>1 corrected him and asked him, no, 2 you're looking at the entire 3 process. He's now answered the 4 question about the entire process, 5 but now you're going back as if 6 somehow the written test is 7 supposed to be treated differently 8 in terms of the validation. 9 MR. HORSLEY: Randall, just let me ask 10 my question. I didn't tell you to 11 ask you my guys questions in a 12 certain way. 13 MR. MORGAN: I know that, but, I 14 mean -- 15 MR. HORSLEY: Come on. 16 MR. MORGAN: Object to the form. 17 Q. My question is: Didn't you already testify that 18 the City made the decision about the cutoff 19 score on the test and that the test would be the 20 first step in the process and that you could not 21 go past the first step if you failed the test? 22 Did the City make that decision? 23 MR. MORGAN: Object to the form.</p>

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<p>1 A. Yes.</p> <p>2 Q. So my question is: Has it been scientifically</p> <p>3 validated by the City that that process does not</p> <p>4 have a disparate impact on Afro-Americans, that</p> <p>5 the test be given first, if you don't meet the</p> <p>6 cutoff, you don't progress and then nothing else</p> <p>7 is considered?</p> <p>8 MR. MORGAN: Object to the form.</p> <p>9 A. We were relying on our consultant to advise us</p> <p>10 in that regard.</p> <p>11 Q. And who was that?</p> <p>12 A. CWH.</p> <p>13 Q. Is it your testimony that CWH informed you that</p> <p>14 if the test were done first without a cutoff</p> <p>15 score, you could not progress past the test if</p> <p>16 you failed, that that had been scientifically</p> <p>17 validated not to have a disparate impact on</p> <p>18 Afro-Americans?</p> <p>19 MR. MORGAN: Object to the form.</p> <p>20 Q. Your testimony is that's what CWH told the City</p> <p>21 of Auburn?</p> <p>22 MR. MORGAN: Object to the form.</p> <p>23 A. I'm sorry. Repeat the question.</p>	<p>1 Q. Would not -- What I'm asking you is: Did they</p> <p>2 tell you the test would not have -- the whole</p> <p>3 process of using the test first with a cutoff</p> <p>4 score would not have an adverse or a disparate</p> <p>5 impact on Afro-Americans? Did they tell you</p> <p>6 that?</p> <p>7 MR. MORGAN: Object to the form.</p> <p>8 A. They did not tell us that it would have adverse</p> <p>9 impact.</p> <p>10 Q. You're not hearing my question. Did they tell</p> <p>11 you it would not have an adverse impact?</p> <p>12 MR. MORGAN: Object to the form.</p> <p>13 A. I guess you're using a double negative in here.</p> <p>14 Q. Well, let me repeat it just so we're clear.</p> <p>15 Did CWH advise the City that if you used the</p> <p>16 test as the first factor in the promotional</p> <p>17 process with a cutoff score beyond which you</p> <p>18 could not go if you failed, that that process</p> <p>19 would not have a disparate impact on</p> <p>20 Afro-American applicants?</p> <p>21 MR. MORGAN: Object to the form.</p> <p>22 A. They did not tell us that using the test as a</p> <p>23 cutoff would not have adverse impact because it</p>
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<p>1 Q. I think you just testified that your consultant</p> <p>2 CWH advised the City of Auburn that if you</p> <p>3 conducted the test as the first factor in the</p> <p>4 process with a cutoff score and that you could</p> <p>5 not progress past the test if you failed it had</p> <p>6 been scientifically validated to not have a</p> <p>7 disparate impact on black applicants?</p> <p>8 MR. MORGAN: Object to the form.</p> <p>9 Q. Did they tell you that?</p> <p>10 MR. MORGAN: Object to the form.</p> <p>11 A. They told us that the process that they use</p> <p>12 using subject matter experts to develop the</p> <p>13 written test was a neutral job-related,</p> <p>14 content-validated approach recognized in</p> <p>15 professional standards as the appropriate way to</p> <p>16 develop a test which is neutral.</p> <p>17 Q. But they didn't tell you that using the test as</p> <p>18 the first factor with a cutoff score was neutral</p> <p>19 or did not have a disparate impact on</p> <p>20 Afro-Americans, did they?</p> <p>21 MR. MORGAN: Object to the form.</p> <p>22 A. They did not tell us that the test would have</p> <p>23 adverse impact.</p>	<p>1 was designed as a neutral test.</p> <p>2 Q. That's all my question was, and you just</p> <p>3 answered it. They did not tell you that,</p> <p>4 correct?</p> <p>5 MR. MORGAN: Object to the form.</p> <p>6 Q. You answered yes.</p> <p>7 A. Why would they?</p> <p>8 Q. And you'll agree with me that the promotional</p> <p>9 process that the City of Auburn used with the</p> <p>10 test as a component of that process caused the</p> <p>11 only black applicants not to receive the</p> <p>12 promotion, correct?</p> <p>13 MR. MORGAN: Object to the form.</p> <p>14 A. They and four others. Four whites did not</p> <p>15 advance beyond that level.</p> <p>16 Q. And how many white applicants were there for</p> <p>17 that battalion chief promotion to your</p> <p>18 knowledge?</p> <p>19 A. Nine.</p> <p>20 Q. Nine?</p> <p>21 A. No. I'm sorry. There were nine that sat for</p> <p>22 it. I think there were eleven that applied.</p> <p>23 Q. Is it your testimony that four white applicants</p>



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<p>1 did not pass the test?</p> <p>2 A. That is my testimony.</p> <p>3 Q. And seven white applicants passed the test; is</p> <p>4 that correct?</p> <p>5 A. Five.</p> <p>6 Q. Five passed the test?</p> <p>7 A. (Witness nods head positively.)</p> <p>8 Q. So there were nine white applicants total. I</p> <p>9 thought you said eleven.</p> <p>10 A. There were eleven white applicants. There were</p> <p>11 two white applicants that opted out before the</p> <p>12 test.</p> <p>13 Q. Okay. So nine whites took the test. Four of</p> <p>14 them failed it, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And you'll agree with me that three</p> <p>17 Afro-Americans took the test and failed it,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. The only three applicants for battalion chief --</p> <p>21 The only three Afro-American battalion chief</p> <p>22 applicants did not make it through the process</p> <p>23 that the City developed for the battalion chief</p>	<p>1 you could get that information?</p> <p>2 A. I'm sure we've got that information.</p> <p>3 Q. And you believe that more have been hired by the</p> <p>4 City of Auburn Fire Department?</p> <p>5 A. Including in the student firefighter program,</p> <p>6 yes.</p> <p>7 Q. But not including the student firefighter</p> <p>8 program.</p> <p>9 A. I don't know about those last two.</p> <p>10 Q. Do you know how many white firemen have been</p> <p>11 hired by the City of Auburn since 1991?</p> <p>12 A. No.</p> <p>13 Q. Do you have an estimate?</p> <p>14 A. Regular or student?</p> <p>15 Q. Regular.</p> <p>16 A. This is a very rough estimate. Probably 20.</p> <p>17 Q. Could the City provide records to us of that</p> <p>18 number?</p> <p>19 A. We can try.</p> <p>20 MR. MORGAN: Well, let me -- you can</p> <p>21 submit a request and we can</p> <p>22 respond to it.</p> <p>23 Q. You said a rough estimate would be 20, correct?</p>
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<p>1 promotion, correct?</p> <p>2 MR. MORGAN: Object to the form. The</p> <p>3 City didn't develop it. Object to</p> <p>4 the form. I'm sorry.</p> <p>5 A. They did not make it through the test.</p> <p>6 Q. They didn't make it through the process,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. Are you aware that the only black firemen hired</p> <p>10 by the City of Auburn Fire Department since 1991</p> <p>11 are Chris Turner, Gerald Stephens, Kevin Harper,</p> <p>12 and Rod Torbert?</p> <p>13 MR. MORGAN: Object to the form.</p> <p>14 A. I'm aware that two of them were: Chris and</p> <p>15 Gerald.</p> <p>16 Q. Do you have any information at your disposal</p> <p>17 that would indicate more Afro-Americans than</p> <p>18 those I just named have been hired by the fire</p> <p>19 department?</p> <p>20 A. Probably.</p> <p>21 Q. You do?</p> <p>22 A. Yeah.</p> <p>23 Q. Can you tell me who they are or are you saying</p>	<p>1 A. A very rough estimate.</p> <p>2 Q. Could be more? Could be less?</p> <p>3 A. Yes.</p> <p>4 Q. You're referring to the student firefighters,</p> <p>5 and I guess your indication is there have been a</p> <p>6 number of Afro-Americans hired into the student</p> <p>7 firefighter program, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Are you aware of one Afro-American student</p> <p>10 firefighter that's been hired by the City of</p> <p>11 Auburn as a full-time firefighter since 1991?</p> <p>12 MR. MORGAN: Object to the form.</p> <p>13 A. I think one.</p> <p>14 Q. Who?</p> <p>15 A. If I'm not mistaken, Gerald was a student</p> <p>16 firefighter.</p> <p>17 Q. Gerald Stephens?</p> <p>18 A. Yes.</p> <p>19 Q. Other than Mr. Stephens, who has been hired to</p> <p>20 your knowledge out of the student firefighter</p> <p>21 program?</p> <p>22 A. I couldn't say.</p> <p>23 Q. What does the student firefighter program do in</p>



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1 order to attract minority applicants in the City  
 2 of Auburn?  
 3 A. Thank you for asking that question.  
 4 Q. Uh-huh (positive response).  
 5 A. The City of Auburn is very aggressive in its  
 6 recruitment process. We cast a very wide net  
 7 such that anybody that wants to know of a job  
 8 with the City of Auburn can easily find out  
 9 about that. Specifically in terms of recruiting  
 10 minorities to the student firefighter program,  
 11 we recruit through the State Employment Office,  
 12 through the City's Web site, through four or  
 13 five traditionally black colleges, through a  
 14 dozen or so black churches, through -- At one  
 15 time we sent literature to every high school in  
 16 the state informing them about the student  
 17 program. More recently we've sent literature --  
 18 contacted every high school within a 50 to 60  
 19 mile range. We have participated in career days  
 20 at those high schools. Much of this has been an  
 21 effort to reach out to minorities and let them  
 22 know of our programs so that we can get them  
 23 into the student program. And ultimately

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1 because our student program does act as a feeder  
 2 into our career program because of the education  
 3 and the experience that the student firefighters  
 4 have, they become -- they are very competitive  
 5 with outside applicants for career firefighter  
 6 positions and so we try to get them into the  
 7 student program so they'll be successful when  
 8 they apply for the career positions. So we cast  
 9 a very wide net, and we've been very aggressive  
 10 with that.  
 11 Q. And, again, other than Gerald Stephens, you're  
 12 not aware of any student fire -- minority  
 13 student firefighter hired full-time by the City  
 14 of Auburn since 1990, correct?  
 15 A. That's correct.  
 16 Q. Do you know who drafted Plaintiff's Exhibits 7  
 17 and 8, who authored those exhibits?  
 18 A. Yes.  
 19 Q. Who?  
 20 A. Me. It was also reviewed by -- After I drafted  
 21 them, it was reviewed by the city attorney, and  
 22 I suspect that public safety employees were also  
 23 involved in that review. But I drafted it.

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1 Q. Do you agree with me that if the battalion chief  
 2 test with a cutoff score had not been used --  
 3 specifically with a cutoff score had not been  
 4 used as a part of the battalion chief promotion  
 5 that Gerald Stephens and Eddie Ogletree would  
 6 have had a better opportunity to receive the  
 7 battalion chief promotion?  
 8 MR. MORGAN: Object to the form.  
 9 A. I don't know that.  
 10 Q. Are you aware or have you been told by any chief  
 11 or any other employee with the City of Auburn  
 12 that there were other factors in that  
 13 promotional process that they thought would have  
 14 hindered Mr. Ogletree or Mr. Stephens pursuant  
 15 to that promotion?  
 16 MR. MORGAN: Object to the form.  
 17 A. No.  
 18 Q. And just so I'm clear -- and I'm going to take a  
 19 little break, and I may be through -- your  
 20 position and the City of Auburn's position back  
 21 in February of '06 and until today is that the  
 22 1991 order in the Hammock case is no longer in  
 23 effect and was not in effect back in 2006,

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1 correct?  
 2 MR. MORGAN: Object to the form. Go  
 3 ahead.  
 4 A. I would say that's true in regard to utilization  
 5 of the selection procedure for lieutenant.  
 6 Q. What about captain?  
 7 MR. MORGAN: Object to the form.  
 8 Q. Let me ask you this. Isn't it true that the  
 9 title change from captain to shift commander --  
 10 Is that right?  
 11 A. Yes.  
 12 Q. -- relieved the City of any requirements  
 13 pursuant to this order with regard to the  
 14 captain promotion?  
 15 MR. MORGAN: Object to the form.  
 16 A. I don't think the City looked at it that way.  
 17 Q. Well --  
 18 A. I think the City saw that as just a title  
 19 change, and they were still abiding by this  
 20 agreement.  
 21 Q. Still abiding by this agreement when? At what  
 22 time?  
 23 A. When shift commander became a job title used in

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<p>1 the fire division.</p> <p>2 Q. And that was in the early to mid-'90s, correct?</p> <p>3 A. Somewhere in there.</p> <p>4 MR. HORSLEY: Let's take a little</p> <p>5 break.</p> <p>6 (Brief recess.)</p> <p>7 MR. HORSLEY: On the record we need to</p> <p>8 state we are missing Exhibit 6.</p> <p>9 There was no document marked as</p> <p>10 Exhibit 6.</p> <p>11 Q. I'm going to get you to identify several</p> <p>12 things.</p> <p>13 (Brief off-the-record discussion.)</p> <p>14 MR. HORSLEY: I will mark what I'm</p> <p>15 about to offer as Exhibit 6.</p> <p>16 (Plaintiff's Exhibit 6 marked for</p> <p>17 identification.)</p> <p>18 Q. This is a document that was produced to us in</p> <p>19 the initial disclosures in this case. Can you</p> <p>20 simply identify that for me?</p> <p>21 (Brief off-the-record discussion.)</p> <p>22 Q. Can you identify it for me?</p> <p>23 A. This is entitled City of Auburn Pay Table</p>	<p>1 the form.</p> <p>2 MR. HORSLEY: This is how I have the</p> <p>3 documents in my file. I may be</p> <p>4 wrong.</p> <p>5 MR. MORGAN: All right. I'm going to</p> <p>6 object to the form.</p> <p>7 MR. HORSLEY: That's fine.</p> <p>8 Q. Have you seen all these documents previously?</p> <p>9 A. I think so.</p> <p>10 Q. My question is: Before the determinations were</p> <p>11 sent to the City of Auburn, did you participate</p> <p>12 in the City of Auburn's response to the EEOC</p> <p>13 claims made by Stephens and Ogletree?</p> <p>14 A. I did.</p> <p>15 Q. And did you do that with Mr. Umbach?</p> <p>16 A. I did.</p> <p>17 Q. Did anybody else with the City to your knowledge</p> <p>18 participate in the City's response to those</p> <p>19 charges?</p> <p>20 A. Yeah. I believe others at this table</p> <p>21 participated in that and others that are not at</p> <p>22 this table, including CWH.</p> <p>23 Q. Who actually drafted the responses?</p>
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<p>1 Beginning October 1, 2005.</p> <p>2 Q. And --</p> <p>3 A. And at the bottom it says: Pay table FY 2006.</p> <p>4 Q. Is that -- What does that mean?</p> <p>5 A. That means that that was the pay table for the</p> <p>6 classified employees of the City of Auburn in</p> <p>7 effect for fiscal year 2006, which began October</p> <p>8 1, 2005.</p> <p>9 (Plaintiff's Exhibits 10 &amp; 11 marked</p> <p>10 for identification.)</p> <p>11 Q. Let me show you what I've marked as Plaintiff's</p> <p>12 Exhibits 10 and 11, which are Notice of Right to</p> <p>13 Sue letters and determinations issued by the</p> <p>14 U.S. Equal Employment Opportunity Commission</p> <p>15 which I believe were both sent to the City of</p> <p>16 Auburn. And I'll just ask you if you've ever</p> <p>17 seen both of those documents.</p> <p>18 MR. MORGAN: I see what they are, but</p> <p>19 are you representing that the</p> <p>20 determination went with the right</p> <p>21 to sue letter?</p> <p>22 MR. HORSLEY: I believe it did.</p> <p>23 MR. MORGAN: I'm going to object to</p>	<p>1 A. I think it was -- it came out of our city</p> <p>2 attorney's office. I don't know who drafted it.</p> <p>3 Q. Around Umbach?</p> <p>4 A. It came from his office.</p> <p>5 (Plaintiff's Exhibit 12 marked for</p> <p>6 identification.)</p> <p>7 Q. What I have marked as 12 are your response to</p> <p>8 our interrogatories.</p> <p>9 MR. HORSLEY: And, Randall, you may</p> <p>10 have sent them to me and I haven't</p> <p>11 seen them in my mass of</p> <p>12 documents. But I don't think I</p> <p>13 have a signed copy yet.</p> <p>14 MR. MORGAN: Okay. I'll check on</p> <p>15 that.</p> <p>16 MR. HORSLEY: If you've already sent</p> <p>17 them, just tell me and I'll try to</p> <p>18 find them. But I assume nothing</p> <p>19 has changed.</p> <p>20 Q. Can you identify Plaintiff's Exhibit 12?</p> <p>21 (Brief off-the-record discussion.)</p> <p>22 A. You asked me to identify this document: Stephen</p> <p>23 A. Reeves' Responses to Plaintiff's First Set of</p>

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<p>1 Interrogatories.</p> <p>2 Q. Is that an accurate copy of your responses to my</p> <p>3 interrogatories as best you can tell?</p> <p>4 A. As best I can tell.</p> <p>5 Q. Have you ever read those before today?</p> <p>6 A. I think I did.</p> <p>7 Q. Do you recall signing them and getting your</p> <p>8 signature notarized? It's not on that document,</p> <p>9 but do you know if you've done that yet?</p> <p>10 A. I don't recall notary -- What I do recall is</p> <p>11 that the City developed responses. That's what</p> <p>12 stands out in my mind more so than this</p> <p>13 document.</p> <p>14 Q. But those are your individual responses. At</p> <p>15 some point you're going to have to sign</p> <p>16 responses, and what I'm trying to get at is:</p> <p>17 Are those going to be the responses that you</p> <p>18 sign or is there going to be something that's</p> <p>19 changed or different before you sign them or do</p> <p>20 you know?</p> <p>21 A. I don't know, but I have no reason to believe</p> <p>22 that I would make any changes.</p> <p>23 Q. As far as you know, these are your responses to</p>	<p>1 Q. I'm not asking about the statistical</p> <p>2 significance of the pool of test takers. I'm</p> <p>3 asking whether Auburn takes the position that</p> <p>4 the test itself had a disparate impact on those</p> <p>5 who took the test.</p> <p>6 A. We take the position that it didn't.</p> <p>7 Q. Do you recall that CWH recommended that no</p> <p>8 cutoff score be applied, that the City not use a</p> <p>9 cutoff score of any number?</p> <p>10 A. I don't recall -- There was a lot of discussion</p> <p>11 about cutoff score. In fact, in the literature</p> <p>12 from CWH, it says some tests use a cutoff</p> <p>13 score. We discussed that quite extensively with</p> <p>14 CWH. We partnered with them through this</p> <p>15 process, and there was a lot of back-and-forth</p> <p>16 discussion. And ultimately the decision was we</p> <p>17 would use a cutoff score as part of the</p> <p>18 process -- the overall process.</p> <p>19 Q. I understand that was the City's ultimate</p> <p>20 decision. My question is: Do you recall that</p> <p>21 CWH recommended that a cutoff score not be</p> <p>22 used? Let me ask it maybe a different way.</p> <p>23 Do you recall that CWH recommended that all</p>
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<p>1 the interrogatories that -- these are going to</p> <p>2 be your sworn responses to my interrogatories?</p> <p>3 A. As far as I know.</p> <p>4 Q. Are you aware that Lieutenant Stephens requested</p> <p>5 of Langley to have his lieutenant's title</p> <p>6 changed to that of captain at some point?</p> <p>7 A. I'm not aware of that.</p> <p>8 Q. So you're not aware that that request was</p> <p>9 denied?</p> <p>10 A. I've never heard that.</p> <p>11 MR. HORSLEY: That's all I have.</p> <p>12 Thank you.</p> <p>13 MR. HANCOCK: I've got just a couple</p> <p>14 of questions. I'll go ahead and</p> <p>15 knock them out.</p> <p>16 EXAMINATION</p> <p>17 BY MR. HANCOCK:</p> <p>18 Q. Mr. Reeves, the City of Auburn does not contend</p> <p>19 that CWH's batching test had a disparate impact</p> <p>20 on test takers, does it?</p> <p>21 A. Not being a statistician, I don't think you can</p> <p>22 establish disparate impact with such a small</p> <p>23 population.</p>	<p>1 applicants be allowed to proceed through the</p> <p>2 assessment center notwithstanding their test</p> <p>3 score?</p> <p>4 A. At one time they actually recommended that only</p> <p>5 the top twelve finishers go through.</p> <p>6 Q. That ultimately was not the City's decision,</p> <p>7 though, right?</p> <p>8 A. No. Ultimately the City's decision was that</p> <p>9 anybody that passed the 70 percent threshold</p> <p>10 would move forward in the process.</p> <p>11 Q. And it was the City's decision not to allow</p> <p>12 those who didn't score 70 or higher on the test</p> <p>13 to proceed to the assessment center; is that</p> <p>14 correct?</p> <p>15 A. As I've said before, that was the decision made</p> <p>16 collectively with CWH as our consultant.</p> <p>17 Q. CWH was the consultant, but it had no decisional</p> <p>18 authority in the decision, did it?</p> <p>19 MR. MORGAN: Object to the form.</p> <p>20 A. Ultimately, if you want to say who had the final</p> <p>21 authority on a cutoff score, it would have been</p> <p>22 the City of Auburn.</p> <p>23 Q. CWH couldn't make any decision at all. All it</p>

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<p>1 could do is offer advice; is that correct?</p> <p>2 MR. MORGAN: Object to the form.</p> <p>3 A. Correct.</p> <p>4 Q. If CWH were to take the position that it</p> <p>5 recommended that all applicants be allowed to</p> <p>6 proceed to the assessment center regardless of</p> <p>7 score and that the test score be but one</p> <p>8 component of the ultimate decision, would you</p> <p>9 dispute that contention?</p> <p>10 MR. MORGAN: Object to the form.</p> <p>11 A. Yes.</p> <p>12 Q. Why?</p> <p>13 A. Part of the discussion included CWH, Michael</p> <p>14 Blair, expressing the opinion that somebody that</p> <p>15 did poorly on the test would find the assessment</p> <p>16 center process demoralizing or humiliating.</p> <p>17 Q. I'm not sure that answers my question, though.</p> <p>18 A. Would you ask the question again, please?</p> <p>19 MR. HANCOCK: Would you read it back</p> <p>20 to him, please?</p> <p>21 (The immediately preceding question</p> <p>22 was read back by the court</p> <p>23 reporter.)</p>	<p>1 a cutoff score.</p> <p>2 Q. Do you remember them urging the City not to use</p> <p>3 a cutoff score?</p> <p>4 MR. MORGAN: Object to the form.</p> <p>5 Q. Pardon me. Do you recall that CWH recommended</p> <p>6 that Auburn not use a cutoff score?</p> <p>7 A. I don't recall that. Again, there was a lot of</p> <p>8 conversation back and forth, and we talked about</p> <p>9 letting the score stand as it was and being a</p> <p>10 part of the final score as it was -- ultimately</p> <p>11 the test was a part of the final score at the</p> <p>12 end of the process or to -- or not to have a</p> <p>13 cutoff score. I just -- There was a lot of</p> <p>14 discussion about that, and ultimately we decided</p> <p>15 that in the tradition of the fire service and in</p> <p>16 being consistent with other testing processes</p> <p>17 that the City had done that the cutoff score was</p> <p>18 an appropriate thing for us to use on the</p> <p>19 written test.</p> <p>20 Q. It was Lee Lamar who first suggested a 70 cutoff</p> <p>21 score, wasn't it?</p> <p>22 A. I can't say he was the first one to say that.</p> <p>23 Again, that's something in the CWH literature.</p>
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<p>1 A. I can only say that there was a lot of</p> <p>2 back-and-forth discussion, and I don't know if</p> <p>3 they actually said that we should not have a</p> <p>4 cutoff score and that everyone should</p> <p>5 participate.</p> <p>6 Q. So Auburn's position is that there was</p> <p>7 discussion back and forth, but it couldn't</p> <p>8 dispute the assertion by CWH that CWH</p> <p>9 recommended that all applicants be allowed to</p> <p>10 proceed through the assessment center</p> <p>11 notwithstanding their test score?</p> <p>12 MR. MORGAN: Object to the form of the</p> <p>13 question.</p> <p>14 A. My position is that we partnered with CWH to</p> <p>15 guide us through a process, and we listened very</p> <p>16 carefully to their recommendations. There was a</p> <p>17 lot of discussion about whether or not to use a</p> <p>18 cutoff score. And ultimately, in conjunction</p> <p>19 with CWH, a cutoff score was determined.</p> <p>20 Whether or not CWH advised us flat-out not to</p> <p>21 use a cutoff score, I don't recall that.</p> <p>22 Q. You don't recall one way or the other?</p> <p>23 A. I don't recall that they flat-out said don't use</p>	<p>1 Q. Well, CWH never recommended that the City use a</p> <p>2 cutoff score of 70, did it?</p> <p>3 A. Actually, in the assessment -- in the exercises</p> <p>4 portion of the whole process, they did.</p> <p>5 Q. I'm talking about the test.</p> <p>6 A. I don't know that they said one way or the</p> <p>7 other. I mean, I couldn't say that they said 70</p> <p>8 percent.</p> <p>9 Q. Is it Auburn's position that CWH ever recommend</p> <p>10 that a cutoff score be used with regard to the</p> <p>11 test -- the written test?</p> <p>12 MR. MORGAN: Object to the form.</p> <p>13 A. They told us that some clients use a cutoff</p> <p>14 score and some clients don't. I'm sorry I'm not</p> <p>15 answering the question.</p> <p>16 Q. Right. Because in point of fact, CWH never</p> <p>17 recommended that the City of Auburn use a cutoff</p> <p>18 score.</p> <p>19 MR. MORGAN: Object to the form.</p> <p>20 Asked and answered.</p> <p>21 A. I don't think they -- Through those discussions</p> <p>22 they didn't say it was wrong to do so.</p> <p>23 Q. But they never said it was right and appropriate</p>

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<p>1 to. They said some clients use a cutoff and</p> <p>2 others don't?</p> <p>3 MR. MORGAN: Object to the form.</p> <p>4 A. And what would we take from that?</p> <p>5 Q. Well, ultimately it was the City of Auburn and</p> <p>6 not CWH that decided to use a cutoff score; is</p> <p>7 that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And it was the City of Auburn and not CWH that</p> <p>10 decided that the cutoff score would be 70; is</p> <p>11 that correct?</p> <p>12 MR. MORGAN: Object to the form.</p> <p>13 A. Yes.</p> <p>14 Q. And it's the City's position that the</p> <p>15 utilization of the written test with a cutoff</p> <p>16 score of 70 did not have an adverse impact on</p> <p>17 applicants or test takers; is that correct?</p> <p>18 A. Correct.</p> <p>19 MR. HANCOCK: I don't have anything</p> <p>20 else.</p> <p>21 MR. HORSLEY: One other question.</p> <p>22 EXAMINATION</p> <p>23 BY MR. HORSLEY:</p>	<p>1 A. That's my recollection.</p> <p>2 Q. And who to your knowledge applied for that</p> <p>3 promotion?</p> <p>4 A. I don't remember. I think I want to say David</p> <p>5 Hines was the one that was promoted from that</p> <p>6 process, but I don't remember who all applied</p> <p>7 for it.</p> <p>8 Q. Do you recall what African-Americans, if any,</p> <p>9 applied for that promotion?</p> <p>10 A. I think Chris Turner applied for that.</p> <p>11 Q. Did he take the test?</p> <p>12 A. I think he did.</p> <p>13 Q. Did he pass it?</p> <p>14 A. He did not.</p> <p>15 Q. What was the cutoff score on that test?</p> <p>16 A. I recall that it was 70 percent.</p> <p>17 Q. Who decided to have a test with a cutoff score</p> <p>18 of 70 on that occasion?</p> <p>19 A. I don't know. Maybe I should say I don't</p> <p>20 recall.</p> <p>21 Q. Was the battalion chief promotion the first time</p> <p>22 that the City had ever implemented a test with a</p> <p>23 cutoff score for any position -- for promotion</p>
Page 123	Page 125
<p>1 Q. The battalion chief promotion in 2006 was the</p> <p>2 first time the City had ever implemented a test</p> <p>3 with a cutoff score for a promotion; is that</p> <p>4 correct?</p> <p>5 MR. MORGAN: Object to the form.</p> <p>6 A. Not correct.</p> <p>7 Q. When was it done before?</p> <p>8 A. It was used for team leader in 2005.</p> <p>9 Q. Team leader in 2005.</p> <p>10 And who was the company that implemented or</p> <p>11 did the test?</p> <p>12 A. We utilized a test that was developed by the</p> <p>13 International Public Management Association.</p> <p>14 Q. And that was for promotions to team leader?</p> <p>15 A. To company officer, parenthesis, lieutenant, or</p> <p>16 maybe it's the other way around. It's the</p> <p>17 company officer level position.</p> <p>18 Q. And that was in 2005?</p> <p>19 A. That's correct.</p> <p>20 Q. And it's your testimony that the City used a</p> <p>21 test with a cutoff score as their first factor</p> <p>22 in that promotional process; if you didn't meet</p> <p>23 the cutoff score, you did not go forward?</p>	<p>1 to any position above team leader?</p> <p>2 MR. MORGAN: Object to the form.</p> <p>3 A. Are you asking if we had ever used a test with a</p> <p>4 cutoff score for the battalion level job?</p> <p>5 Q. Yes.</p> <p>6 A. No.</p> <p>7 Q. Okay.</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. Is it Chief Lamar now?</p> <p>10 A. Yes.</p> <p>11 Q. Was Chief Lamar required to take a test with a</p> <p>12 cutoff score in order to be promoted to chief?</p> <p>13 A. No.</p> <p>14 Q. Was that a position that people could apply for?</p> <p>15 A. The city manager made an appointment to the</p> <p>16 unclassified service. The fire chief, the</p> <p>17 police chief, the department heads are in the</p> <p>18 unclassified service. They are not covered by</p> <p>19 the personnel policies of the City of Auburn.</p> <p>20 They serve strictly at the will of the city</p> <p>21 manager. He was appointed to that position.</p> <p>22 Q. What about -- What was his job before he was</p> <p>23 deputy chief?</p>



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<p>1 A. Before he was deputy chief, he was team leader.</p> <p>2 Q. He was a team leader?</p> <p>3 A. I'm sorry. He was the training officer.</p> <p>4 Q. Training officer. And he was promoted from</p> <p>5 training officer to deputy chief; is that</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. Did that promotion require an assessment center?</p> <p>9 A. No, not that I recall.</p> <p>10 Q. Was he required to take any type of test?</p> <p>11 A. I think there were interviews.</p> <p>12 Q. Do you recall who else interviewed for that</p> <p>13 position?</p> <p>14 A. I don't.</p> <p>15 Q. Will you agree with me that Chief Lamar was</p> <p>16 promoted to chief based on experience and</p> <p>17 seniority?</p> <p>18 MR. MORGAN: Object to the form.</p> <p>19 A. No.</p> <p>20 Q. You would not?</p> <p>21 A. No.</p> <p>22 Q. What were the circumstances of that promotion?</p> <p>23 MR. MORGAN: Object to the form.</p>	<p>1 FURTHER DEPONENT SAITH NOT</p> <p>2 *****</p> <p>3</p> <p>4 REPORTER'S CERTIFICATE</p> <p>5 STATE OF ALABAMA:</p> <p>6 MONTGOMERY COUNTY:</p> <p>7 I, Pamela A. Wilbanks, CCR, Registered</p> <p>8 Professional Reporter, and Commissioner for the State</p> <p>9 of Alabama at Large, do hereby certify that I reported</p> <p>10 the deposition of:</p> <p>11 STEVEN A. REEVES</p> <p>12 who was first duly sworn by me to speak the truth, the</p> <p>13 whole truth and nothing but the truth, in the matter</p> <p>14 of:</p> <p>15 EDDIE OGLETREE, an individual,</p> <p>16 GERALD STEPHENS, an</p> <p>17 individual,</p> <p>18 Plaintiffs,</p> <p>19 Vs.</p> <p>20 CITY OF AUBURN, a municipality</p> <p>21 in the State of Alabama, LARRY</p> <p>22 LANGLEY, and individual, LEE LAMAR,</p> <p>23 an individual, BILL HAM, JR., an</p>
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<p>1 A. It wasn't my decision.</p> <p>2 Q. Do you know why he was promoted to that</p> <p>3 position?</p> <p>4 A. I assume because he was doing a good job as</p> <p>5 acting chief.</p> <p>6 Q. His experience and his job history with the City</p> <p>7 of Auburn allowed for him to get that</p> <p>8 promotion. Would you agree with that?</p> <p>9 MR. MORGAN: Object to the form.</p> <p>10 He's asked and answered.</p> <p>11 A. The skill set -- From an HR perspective, the</p> <p>12 skill set that Lee Lamar brought to the table</p> <p>13 combined with education and his experience as a</p> <p>14 fire officer enabled him to succeed as the</p> <p>15 acting chief. And I would presume -- I'm not</p> <p>16 speaking for my city manager, but I'm assuming</p> <p>17 my city manager took that into consideration</p> <p>18 when he made the appointment.</p> <p>19 MR. HORSLEY: That's all. Thank</p> <p>20 you.</p> <p>21 (Deposition concluded at</p> <p>22 approximately 12:30 p.m.)</p> <p>23 *****</p>	<p>1 individual, BILL JAMES, an</p> <p>2 individual, CHARLES M. DUGGAN, an</p> <p>3 individual, and CORTEZ LAWRENCE,</p> <p>4 an individual,</p> <p>5 Defendants.</p> <p>6 In The U.S. District Court</p> <p>7 For the Middle District of Alabama</p> <p>8 Eastern Division</p> <p>9 3:07-CV-867-WKW</p> <p>10 on Wednesday, July 30, 2008.</p> <p>11 The foregoing 128 computer printed pages</p> <p>12 contain a true and correct transcript of the</p> <p>13 examination of said witness by counsel for the parties</p> <p>14 set out herein. The reading and signing of same is</p> <p>15 hereby not waived.</p> <p>16 I further certify that I am neither of kin nor</p> <p>17 of counsel to the parties to said cause nor in any</p> <p>18 manner interested in the results thereof.</p> <p>19 This 5th day of August 2008.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>



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Pamela A. Wilbanks, ACCR #334  
Expiration Date: 9-30-2008  
Registered Professional Reporter  
and Commissioner for the State  
of Alabama at Large

I, Steven A. Reeves, hereby certify that I have read the foregoing transcript of my deposition given on Wednesday, July 30, 2008, and it is a true and correct transcript of the testimony given by me at the time and place stated with the corrections, if any, and the reasons therefor noted on a separate sheet of paper and attached hereto.

\_\_\_\_\_  
Steven A. Reeves

SWORN TO AND SUBSCRIBED before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

8/5/08  
Mr. Steven A. Reeves  
1071 Terrace Acres Drive  
Auburn, AL 36830  
IN RE: OGLETREE AND STEPHENS VS. CITY OF AUBURN, ETC.  
Dear Mr. Reeves:  
Enclosed is a condensed copy of the transcript of your deposition taken on Wednesday, July 30, 2008. Please read the transcript and make any corrections on the correction sheet provided specifying the page and line number of each correction.

You will find the original signature page attached to the front of the transcript. Even if there are no corrections, please sign the original signature page and have your signature notarized.

Please return the signature page and correction sheet within thirty days. The list of corrections will be attached to the original deposition and all parties will be notified of any changes.

Thank you for your prompt attention to this matter.

Sincerely,

Pamela A. Wilbanks, CCR, ACCR#391, RPR

cc: Mr. Richard Horsley  
Mr. Randall Morgan  
Mr. William Hancock

**DEPOSITION OF WILLIAM HOWARD JAMES**

**July 30, 2008**

**Pages 1 through 39**

**PREPARED BY:**

**Haislip, Ragan, Green, Starkie & Watson, P.C.**

**566 South Perry Street**

**Post Office Box 62**

**Montgomery, AL 36104**

**Phone: (334) 263-4455**

**Fax: (334) 263-9167**

**E-mail: [haislipragan@charter.net](mailto:haislipragan@charter.net)**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

EDDIE OGLETREE, an individual,  
GERALD STEPHENS, an  
individual,

Plaintiffs,

Vs.

CIVIL ACTION NO.  
3:07-CV-867-WKW

CITY OF AUBURN, a municipality  
in the State of Alabama, LARRY  
LANGLEY, an individual, LEE LAMAR,  
an individual, BILL HAM, JR., an  
individual, STEVEN A. REEVES, an  
individual, BILL JAMES, an  
individual, CHARLES M. DUGGAN, an  
individual, and CORTEZ LAWRENCE,  
an individual,

Defendants.

\* \* \* \* \*

DEPOSITION OF WILLIAM HOWARD JAMES, taken  
pursuant to stipulation and agreement before Pamela A.  
Wilbanks, Certified Court Reporter, ACCR# 391,  
Registered Professional Reporter and Commissioner for  
the State of Alabama at Large, in the Conference Room  
of Auburn City Hall, 144 Tichenor Avenue, Auburn,  
Alabama, on Wednesday, July 30, 2008, commencing at  
approximately 1:20 p.m.

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<p>1 2 APPEARANCES 3 4 FOR THE PLAINTIFF: 5 Mr. Richard F. Horsley 6 KING, HORSLEY &amp; LYONS 7 Attorneys at Law 8 1 Metroplex Drive 9 Suite 280 10 Birmingham, AL 35209 11 12 FOR THE DEFENDANT: 13 14 Mr. Randall Morgan 15 HILL, HILL, CARTER, FRANCO, COLE &amp; BLACK 16 Attorneys at Law 17 425 South Perry Street 18 Montgomery, Alabama 19 20 ALSO PRESENT: 21 Mr. D'Arcy Wernette 22 Mr. Steven Reeves 23 Mr. Larry Langley 24 Mr. Lee Lamar 25 Mr. Eddie Ogletree 26 Mr. Gerald Stephens 27 28 ***** 29 EXAMINATION INDEX 30 BY MR. HORSLEY ..... 4 31 32 ***** 33</p>	<p>1 signature of the witness to this deposition is hereby 2 not waived. 3 ***** 4 WILLIAM HOWARD JAMES 5 The witness, after having first been duly 6 sworn to speak the truth, the whole truth and nothing 7 but the truth testified as follows: 8 EXAMINATION 9 BY MR. HORSLEY: 10 Q. Please tell us your full name. 11 A. William Howard James. 12 Q. And do you go by Bill James? 13 A. Yes. 14 Q. My name is Richard Horsley. I'm going to ask 15 you some questions. Just like with Mr. Reeves, 16 if you don't understand something or want me to 17 rephrase it, just tell me and I will do so. 18 Once you answer a question, I'm going to assume 19 you understood it and are giving the answer you 20 intended to give. Okay? 21 A. Okay. 22 Q. Where do you currently reside? 23 A. 8371 Lee Road 188, Waverly.</p>
Page 3	Page 5
<p>1 2 STIPULATION 3 4 It is hereby stipulated and agreed by and 5 between counsel representing the parties that the 6 deposition of WILLIAM HOWARD JAMES is taken pursuant to 7 the Alabama Rules of Civil Procedure and that said 8 deposition may be taken before Pamela A. Wilbanks, 9 Registered Professional Reporter and Commissioner for 10 the State of Alabama at Large, without the formality of 11 a commission, that objections to questions other than 12 objections as to the form of the question need not be 13 made at this time but may be reserved for a ruling at 14 such time as the said deposition may be offered in 15 evidence or used for any other purpose by either party 16 provided for by the Statute. 17 18 It is further stipulated and agreed by and 19 between counsel representing the parties in this case 20 that the filing of said deposition is hereby waived and 21 may be introduced at the trial of this case or used in 22 any other manner by either party hereto provided for by 23 the Statute regardless of the waiving of the filing of 24 the same. 25 26 It is further stipulated and agreed by and</p>	<p>1 Q. What's the ZIP Code out there? 2 A. 36879. 3 Q. Where are you currently employed? 4 A. City of Auburn. 5 Q. In what capacity with the City? 6 A. Public safety director. 7 Q. How long have you held that job? 8 A. October of 2004. 9 Q. Generally tell me what you do as a public safety 10 director for the City of Auburn. 11 A. Provide administrative direction for the 12 divisions in public safety, budgets, contract, 13 personnel. 14 Q. What was your job immediately before that? 15 A. I was a building official with the City of 16 Auburn. 17 Q. The building official? 18 A. Uh-huh (positive response). 19 Q. How long did you hold that job? 20 A. Fifteen years, sixteen years. 21 Q. Where were you immediately before that? 22 A. I worked with the economic development 23 department for a year --</p>

Page 6	Page 8
<p>1 Q. City of Auburn?</p> <p>2 A. -- with the City of Auburn prior to that.</p> <p>3 Q. Before that where were you employed?</p> <p>4 A. I worked for Castle and Algernon Blair, a</p> <p>5 contracting company out of Montgomery.</p> <p>6 Q. What kind of contracting?</p> <p>7 A. They did building contracting.</p> <p>8 Q. Do you recall where you worked before that?</p> <p>9 A. Self-employed in Tennessee.</p> <p>10 Q. What did you do in Tennessee?</p> <p>11 A. Built a few houses.</p> <p>12 Q. Did you have a company name or ...</p> <p>13 A. Worked with my brother-in-law.</p> <p>14 Q. Was there a name of the company?</p> <p>15 A. Blue Ridge Construction or Blue -- Blue Ridge</p> <p>16 maybe.</p> <p>17 Q. Do you have relatives that reside in Lee County?</p> <p>18 A. Yes.</p> <p>19 Q. Can you tell me who they are, or if it's a lot</p> <p>20 of them --</p> <p>21 A. I've got in-laws and three brothers and sisters</p> <p>22 and such.</p> <p>23 Q. Just provide a list of your -- what I want -- I</p>	<p>1 A. I was -- participated with the others that have</p> <p>2 been mentioned here today discussing what we</p> <p>3 were going to do for the promotion process.</p> <p>4 Q. And I think you were a part of the group that</p> <p>5 Mr. Reeves named that decided how that promotion</p> <p>6 would take place; is that correct?</p> <p>7 A. Yes. I had input, yes.</p> <p>8 Q. And do you agree with him that that group of</p> <p>9 people decided to hire CWH to conduct the cutoff</p> <p>10 test?</p> <p>11 A. Yes. Well, to hire CWH, yes.</p> <p>12 Q. And the people that he named, were those the</p> <p>13 people that you remember being involved in that</p> <p>14 decision?</p> <p>15 A. In the hiring of the company?</p> <p>16 Q. Yes.</p> <p>17 A. Yes.</p> <p>18 Q. He also spoke about decisions or meetings that</p> <p>19 were had after CWH was hired. What I want to</p> <p>20 know is: Do you recall being in those meetings</p> <p>21 when discussions were held with CWH about the</p> <p>22 cutoff test and the assessment center?</p> <p>23 MR. MORGAN: Object to the form.</p>
Page 7	Page 9
<p>1 don't want to spend a bunch of time going</p> <p>2 through them, but what I need to know is</p> <p>3 relatives in Lee County, Macon County, Lowndes</p> <p>4 County, Russell County, Montgomery County. I</p> <p>5 think that's it.</p> <p>6 A. Okay.</p> <p>7 Q. Macon. Did I say Macon?</p> <p>8 Randall knows which counties they are.</p> <p>9 A. Okay.</p> <p>10 Q. You said that your job -- one of the elements of</p> <p>11 your job was dealing with personnel; is that</p> <p>12 correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. What aspects of personnel decisions are you</p> <p>15 involved in?</p> <p>16 A. Review personnel actions, whether it be</p> <p>17 performance appraisals, corrective actions,</p> <p>18 things of that nature.</p> <p>19 Q. Did you participate in any way in the battalion</p> <p>20 chief promotions back in 2006?</p> <p>21 A. I did.</p> <p>22 Q. What participation did you have in those</p> <p>23 promotions?</p>	<p>1 A. Yes.</p> <p>2 Q. Is it your memory that the City of Auburn was</p> <p>3 attempting to comply with the 1991 court order</p> <p>4 that we've talked about earlier during that</p> <p>5 promotion or was that not a consideration?</p> <p>6 A. I don't recall that personally being a</p> <p>7 consideration.</p> <p>8 Q. You don't recall specifically the order being</p> <p>9 something the City felt like it had to comply</p> <p>10 with pursuant to those promotions?</p> <p>11 MR. MORGAN: Object to the form.</p> <p>12 A. Right.</p> <p>13 Q. Is that right?</p> <p>14 A. Yes.</p> <p>15 Q. And are you familiar with that order? Have you</p> <p>16 read it?</p> <p>17 A. Not recently, but I have read it.</p> <p>18 Q. Can you tell me why the City did not believe at</p> <p>19 that time that it was -- that it had to comply</p> <p>20 with the 1991 order?</p> <p>21 MR. MORGAN: Object to the form.</p> <p>22 A. I'm not sure I understand the question. In</p> <p>23 reference to what?</p>

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<p>1 Q. You said you didn't feel like the 1991 order was</p> <p>2 a consideration in y'all's decision-making</p> <p>3 process for the battalion chief promotion in</p> <p>4 2006.</p> <p>5 MR. MORGAN: Object to the form.</p> <p>6 Q. Is that correct?</p> <p>7 A. Whether we had to do an assessment center?</p> <p>8 Q. Whether you had to comply with the order.</p> <p>9 MR. MORGAN: Object to the form.</p> <p>10 A. I guess -- I'm sorry. I don't understand.</p> <p>11 Q. Let me ask it again.</p> <p>12 When y'all were talking about the promotion</p> <p>13 to battalion chief and decided how that</p> <p>14 promotion was going to take place, when y'all</p> <p>15 were having these meetings, before and when you</p> <p>16 joined up with CWH, what I want to know is: Is</p> <p>17 it your memory that the City felt as though it</p> <p>18 was obligated to comply with the 1991 order</p> <p>19 pursuant to those promotions?</p> <p>20 MR. MORGAN: Object to the form.</p> <p>21 A. Whether it was obligated to follow that?</p> <p>22 Q. Uh-huh (positive response).</p> <p>23 A. No.</p>	<p>1 Q. You're saying y'all weren't doing an assessment</p> <p>2 center because the order said you had to do it?</p> <p>3 MR. MORGAN: Object to the form.</p> <p>4 A. Not in my understanding.</p> <p>5 Q. Again, was it your understanding that the City</p> <p>6 had to comply with the 1991 order for the</p> <p>7 battalion chief promotion in 2006?</p> <p>8 MR. MORGAN: Object to the form.</p> <p>9 A. I'm not sure what the position was from the</p> <p>10 City's standpoint of whether we had to comply</p> <p>11 with the '91 order.</p> <p>12 Q. You don't know one way or the other; is that</p> <p>13 correct?</p> <p>14 A. Yes. I don't have that knowledge.</p> <p>15 Q. Did you ever have any meetings about the 1991</p> <p>16 order and whether or not it was still in force</p> <p>17 with the city attorney, Arnold Umbach?</p> <p>18 A. No. I don't recall having any meetings with</p> <p>19 Attorney Umbach.</p> <p>20 Q. Do you recall the 1991 order being the subject</p> <p>21 of any discussions that y'all had when you were</p> <p>22 deciding about the battalion chief promotion</p> <p>23 maybe from Steve Reeves?</p>
Page 11	Page 13
<p>1 Q. The City did not believe it was, correct?</p> <p>2 MR. MORGAN: Object to the form.</p> <p>3 A. That we had to comply with the order?</p> <p>4 Q. The City did not believe it had to comply with</p> <p>5 the order?</p> <p>6 MR. MORGAN: Object to the form.</p> <p>7 A. No, I don't want to say that. No.</p> <p>8 Q. We're not connecting.</p> <p>9 Are you saying that it's your memory the</p> <p>10 City did not believe it had to comply with the</p> <p>11 1991 order pursuant to the 2006 battalion chief</p> <p>12 promotions?</p> <p>13 MR. MORGAN: Object to the form.</p> <p>14 A. I'm sorry.</p> <p>15 Q. That's okay.</p> <p>16 Did you or did you not have to comply with</p> <p>17 the order?</p> <p>18 MR. MORGAN: I'm going to object to</p> <p>19 the form.</p> <p>20 A. I don't think that was the only reason we went</p> <p>21 to an assessment center was because the order</p> <p>22 said that you had to use an assessment center</p> <p>23 for a promotional process.</p>	<p>1 A. There may have been some discussion about there</p> <p>2 is this order and it has -- I believe in</p> <p>3 captains -- assessment centers. There may have</p> <p>4 been some discussions on that, yes.</p> <p>5 Q. From your standpoint am I correct in saying that</p> <p>6 the City did not attempt to comply with the 1991</p> <p>7 order pursuant to the battalion chief promotions</p> <p>8 in 2006?</p> <p>9 MR. MORGAN: Object to the form.</p> <p>10 A. I wouldn't say we attempted to not comply, no.</p> <p>11 Q. You wouldn't say you -- Say that again. I</p> <p>12 wasn't sure what your answer was, if you don't</p> <p>13 mind.</p> <p>14 Did the City attempt to comply with the</p> <p>15 1991 order for the 2006 battalion chief</p> <p>16 promotions?</p> <p>17 MR. MORGAN: Object to the form.</p> <p>18 A. Yeah. Yes, we attempted to comply with it.</p> <p>19 Q. You did? And how did you do that?</p> <p>20 A. If you assume that we had to do an assessment</p> <p>21 center for this promotion, then I guess we</p> <p>22 complied with the order.</p> <p>23 Q. In Section 12 of the order, which we've marked</p>



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<p>1 as Plaintiff's Exhibit 3 -- I'll show it to</p> <p>2 you -- if you would read the section for me,</p> <p>3 Section 12. I've highlighted it. I apologize</p> <p>4 for that.</p> <p>5 A. (Witness complies.)</p> <p>6 Q. Section 12, which is the section that deals with</p> <p>7 the assessment center and promotions, did you</p> <p>8 see anywhere in that section any reference to a</p> <p>9 test with a cutoff score?</p> <p>10 MR. MORGAN: Object to the form.</p> <p>11 A. No, sir.</p> <p>12 Q. Is it your understanding that this order</p> <p>13 requires an assessment center or an assessment</p> <p>14 center that has a test with a cutoff score?</p> <p>15 MR. MORGAN: Object to the form.</p> <p>16 A. Well, I think I have an understanding of what an</p> <p>17 assessment center is.</p> <p>18 Q. Okay.</p> <p>19 A. And --</p> <p>20 Q. You'll agree with me that Section 12 does not --</p> <p>21 MR. MORGAN: Let him answer the</p> <p>22 question.</p> <p>23 Q. I'm sorry.</p>	<p>1 it?</p> <p>2 A. I remember looking at this document back when we</p> <p>3 started the process.</p> <p>4 Q. Will you agree with me that as described in that</p> <p>5 document, the test and the assessment center are</p> <p>6 two completely separate things?</p> <p>7 MR. MORGAN: Object to the form.</p> <p>8 A. I would have to read back through here and see</p> <p>9 how it's spelled out in this document here.</p> <p>10 Q. There's a section on page 9 that describes an</p> <p>11 assessment center.</p> <p>12 A. Okay.</p> <p>13 Q. And if you don't mind, I'll read it into the</p> <p>14 record and ask if that's what you understand an</p> <p>15 assessment center to be.</p> <p>16 An assessment center is an integrated</p> <p>17 system of simulations designed to elicit</p> <p>18 behavior similar to that required for success in</p> <p>19 a target job. More simply, it is a series of</p> <p>20 activities that are similar to those performed</p> <p>21 in a given job. Each activity mirrors a</p> <p>22 different aspect of the job. Performance in</p> <p>23 these activities is observed by assessors who</p>
Page 15	Page 17
<p>1 A. I think I have an understanding of what an</p> <p>2 assessment center is, and there are various</p> <p>3 components in an assessment center.</p> <p>4 Q. You'll agree with me that this document does not</p> <p>5 reference in any way a cutoff score either as a</p> <p>6 prerequisite or as a component of the assessment</p> <p>7 center that's been approved by this court; is</p> <p>8 that correct?</p> <p>9 MR. MORGAN: Object to the form.</p> <p>10 A. That's right.</p> <p>11 Q. In fact, an assessment center and a test with a</p> <p>12 cutoff score or any tests are two separate</p> <p>13 entities; is that correct?</p> <p>14 MR. MORGAN: Object to the form.</p> <p>15 A. I don't know that I would agree with that.</p> <p>16 Q. You would not agree with that?</p> <p>17 What we've marked earlier as Plaintiff's</p> <p>18 Exhibit 2, which is the Auburn Fire Division</p> <p>19 Orientation Manual, Promotional Written Test and</p> <p>20 Assessment Center Process, have you seen this</p> <p>21 document?</p> <p>22 A. Yes.</p> <p>23 Q. Have you looked at it and read it and understand</p>	<p>1 are trained to be fair and objective. The panel</p> <p>2 of objective assessors will be selected from</p> <p>3 departments similar to yours based upon their</p> <p>4 expertise and knowledge regarding the target</p> <p>5 job. The assessors will observe you performing</p> <p>6 a series of exercises in order to evaluate</p> <p>7 several job performance dimensions deemed</p> <p>8 important to performing successfully on the</p> <p>9 job. Assessors compare candidates' performance</p> <p>10 to predetermined performance guidelines to</p> <p>11 ascertain who will perform effectively on the</p> <p>12 job.</p> <p>13 Is that consistent with your understanding</p> <p>14 of what an assessment center is?</p> <p>15 MR. MORGAN: Object to the form.</p> <p>16 A. I would say no.</p> <p>17 Q. That's not consistent with your understanding?</p> <p>18 A. Not my personal understanding of an assessment</p> <p>19 center, no.</p> <p>20 Q. How is your personal understanding different</p> <p>21 than what I just read to you?</p> <p>22 A. I think it included those components right</p> <p>23 there, but also a part of that would be an</p>

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<p>1 examination.</p> <p>2 Q. You understand that the examination is part of</p> <p>3 the assessment center; is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. And where did you gain that information?</p> <p>6 A. That's just my personal belief. I don't know</p> <p>7 that I've read or -- I can't point to a specific</p> <p>8 document that says this is why I believe that.</p> <p>9 I just believe that an assessment center would</p> <p>10 be evaluating a wide ...</p> <p>11 Q. If you assume that what I just read you is</p> <p>12 correct and that that is a correct description</p> <p>13 of an assessment center, you would agree with me</p> <p>14 that a written test is not a part of it,</p> <p>15 correct?</p> <p>16 MR. MORGAN: Object to the form.</p> <p>17 A. Based on that definition.</p> <p>18 Q. Based on that definition your answer is "yes"?</p> <p>19 MR. MORGAN: Object to the form.</p> <p>20 A. Yes.</p> <p>21 Q. And, in fact, the test with the cutoff score</p> <p>22 that was given to the battalion chief applicants</p> <p>23 in 2006 was a prerequisite before you could</p>	<p>1 A. The assessment process.</p> <p>2 Q. You'll agree with me if you didn't pass the</p> <p>3 test, you didn't go to the assessment center,</p> <p>4 did you?</p> <p>5 MR. MORGAN: Object to the form.</p> <p>6 Asked --</p> <p>7 A. You didn't move further along the process, that</p> <p>8 is correct.</p> <p>9 Q. The document speaks for itself, and I'll submit</p> <p>10 that the document clearly shows the test and the</p> <p>11 assessment center are two separate entities.</p> <p>12 Okay?</p> <p>13 MR. MORGAN: If that's a question, I</p> <p>14 object to the form.</p> <p>15 Q. Was the assessment -- I think you testified</p> <p>16 earlier that in doing an assessment center or</p> <p>17 attempting to do an assessment center for the</p> <p>18 battalion chief promotion in 2006 that you felt</p> <p>19 like the City was trying to comply with the 1991</p> <p>20 court order; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know whether or not the 2006 assessment</p> <p>23 center used for the battalion chief promotion</p>
Page 19	Page 21
<p>1 actually go to the assessment center; is that</p> <p>2 correct?</p> <p>3 MR. MORGAN: Object to the form.</p> <p>4 A. Yes. You had to pass the test before you went</p> <p>5 to the next step in the process, yes.</p> <p>6 Q. According to the document that y'all used for</p> <p>7 the assessment center, the assessment center as</p> <p>8 I just read to you which was implemented by the</p> <p>9 City of Auburn doesn't include a test, does it?</p> <p>10 MR. MORGAN: Object to the form of</p> <p>11 that question.</p> <p>12 Q. What I just read to you --</p> <p>13 A. Out of that definition, it did not say anything</p> <p>14 about a test.</p> <p>15 MR. MORGAN: Object to the form.</p> <p>16 Q. Well, this is the company y'all were using to do</p> <p>17 the assessment center, correct?</p> <p>18 A. Right.</p> <p>19 Q. Is there any reason why you would disagree with</p> <p>20 the company y'all had hired to do the assessment</p> <p>21 center?</p> <p>22 A. No. But the test was a part of the process.</p> <p>23 Q. The test was a prerequisite --</p>	<p>1 had been approved by the United States District</p> <p>2 Court for the Middle District of Alabama Eastern</p> <p>3 Division?</p> <p>4 A. I have no knowledge of that.</p> <p>5 Q. You don't know one way or the other?</p> <p>6 A. Right. Correct.</p> <p>7 Q. Will you agree with me that in the paragraph we</p> <p>8 just read in Section 12 it says that the City at</p> <p>9 that time submitted to the court an assessment</p> <p>10 center which shall be approved by the court? Do</p> <p>11 you agree with that?</p> <p>12 MR. MORGAN: Object to the form.</p> <p>13 A. That's what it says. I wasn't here at that</p> <p>14 time.</p> <p>15 Q. And you don't know one way or the other if this</p> <p>16 assessment center for the 2006 BC promotion was</p> <p>17 approved by the court or not, correct?</p> <p>18 A. No, sir.</p> <p>19 Q. Are you familiar with Kathleen Robinson?</p> <p>20 A. No, I'm not.</p> <p>21 Q. Will you agree with me, Mr. James, that if, in</p> <p>22 fact, the City required a cutoff test before you</p> <p>23 could go to the assessment center that that</p>

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<p>1 would violate the 1991 order that we just read?</p> <p>2 MR. MORGAN: Object to the form.</p> <p>3 A. Would I agree that it would violate it?</p> <p>4 Q. That it would violate it.</p> <p>5 MR. MORGAN: First of all, that's a</p> <p>6 legal question. But if you've got</p> <p>7 an opinion --</p> <p>8 A. My opinion is no.</p> <p>9 Q. In your opinion it would not violate the order?</p> <p>10 A. Correct.</p> <p>11 Q. And why is that your opinion?</p> <p>12 MR. MORGAN: Object to the form.</p> <p>13 A. Because it doesn't say anything about not having</p> <p>14 a test.</p> <p>15 Q. Your testimony is that because the order doesn't</p> <p>16 mention a test, then it doesn't violate the --</p> <p>17 giving a test doesn't violate the order?</p> <p>18 MR. MORGAN: Object to the form.</p> <p>19 A. Correct. Based on my -- what my opinion is of</p> <p>20 an assessment center.</p> <p>21 Q. Did you hear testimony earlier from Mr. Reeves</p> <p>22 about the number of black firefighters hired --</p> <p>23 firemen hired since the 1991 order?</p>	<p>1 interrogatories that I submitted to the City and</p> <p>2 your attorney. I'm going to show them to you</p> <p>3 and just ask if you've ever seen them before.</p> <p>4 MR. MORGAN: Richard, I have the</p> <p>5 signed responses. And I will send</p> <p>6 those to you, and I will show him</p> <p>7 his signed responses --</p> <p>8 MR. HORSLEY: Okay.</p> <p>9 MR. MORGAN: -- if that's okay.</p> <p>10 MR. HORSLEY: That's fine.</p> <p>11 MR. MORGAN: We can make a copy of it</p> <p>12 if you want to.</p> <p>13 MR. HORSLEY: It doesn't matter. As</p> <p>14 long as they are the same, it</p> <p>15 doesn't matter.</p> <p>16 MR. MORGAN: I don't think we made</p> <p>17 any changes.</p> <p>18 MR. HORSLEY: If you'll send me the</p> <p>19 signed copies, I don't care if</p> <p>20 those are not attached to the</p> <p>21 deposition.</p> <p>22 MR. MORGAN: The unsigned responses I</p> <p>23 sent you have not been changed. I</p>
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<p>1 A. Yes, sir.</p> <p>2 Q. And you've been there all that time, maybe not</p> <p>3 in the same position --</p> <p>4 A. Correct.</p> <p>5 Q. -- but did you hear when I said that -- when I</p> <p>6 named four black firefighters that were hired</p> <p>7 since that time?</p> <p>8 A. I heard you mention that, yes.</p> <p>9 Q. Do you know of any other black firemen that were</p> <p>10 hired since that time by the City of Auburn Fire</p> <p>11 Department?</p> <p>12 A. No, sir.</p> <p>13 Q. You heard Mr. Reeves give a rough estimate that</p> <p>14 20 white people had been hired or white firemen</p> <p>15 had been hired since 1991. Do you agree with</p> <p>16 that estimate?</p> <p>17 A. To be honest, I couldn't say if that was ten</p> <p>18 over or ten -- I don't know. I don't have a</p> <p>19 feel for whether that's even close.</p> <p>20 (Plaintiff's Exhibit 13 marked for</p> <p>21 identification.)</p> <p>22 Q. I'll show you what I've marked as Plaintiff's</p> <p>23 Exhibit 13. These are unsigned answers to</p>	<p>1 have the signed ones, and I'll</p> <p>2 send them to you.</p> <p>3 MR. HORSLEY: So for the record, the</p> <p>4 interrogatory responses we're</p> <p>5 attaching as exhibits to this</p> <p>6 deposition are exactly the same as</p> <p>7 the interrogatory responses that</p> <p>8 have been signed under oath by</p> <p>9 each individual --</p> <p>10 MR. MORGAN: That's my understanding.</p> <p>11 Q. Do you recall signing your answers to</p> <p>12 interrogatories?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And this is an accurate copy of your answers; is</p> <p>15 that correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And these answers are correct and answers given</p> <p>18 to the best of your knowledge, correct?</p> <p>19 A. Yes, sir.</p> <p>20 (Plaintiff's Exhibit 14 marked for</p> <p>21 identification.)</p> <p>22 Q. I'll show you what I've marked -- Let me do this</p> <p>23 first. Just so I can go ahead and get these</p>

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<p>1 attached, these are the City of Auburn's</p> <p>2 responses to my interrogatories marked as</p> <p>3 Plaintiff's Exhibit 14. Have you seen those?</p> <p>4 MR. MORGAN: I'll make the same</p> <p>5 representation to you.</p> <p>6 MR. HORSLEY: Who is going to sign or</p> <p>7 who signed those?</p> <p>8 MR. MORGAN: I don't know who signed</p> <p>9 for the City.</p> <p>10 (Off-the-record discussion.)</p> <p>11 MR. MORGAN: The city manager, yeah.</p> <p>12 MR. HORSLEY: Who is that?</p> <p>13 MR. MORGAN: Charles Duggan.</p> <p>14 MR. HORSLEY: So Plaintiff's Exhibit</p> <p>15 14 is the City's responses, and</p> <p>16 those were signed without change</p> <p>17 by Charles Duggan, the city</p> <p>18 manager, correct?</p> <p>19 (Plaintiff's Exhibit 15 marked for</p> <p>20 identification.)</p> <p>21 Q. What I've marked as Plaintiff's Exhibit 15 is a</p> <p>22 letter sent to you back on May 12, 2006 from</p> <p>23 Horace Clanton, Eddie Ogletree, and Gerald</p>	<p>1 Q. Was that letter sent to Lieutenant Stephens in</p> <p>2 response to Plaintiff's Exhibit 15?</p> <p>3 A. Let me see it again.</p> <p>4 (Brief off-the-record discussion.)</p> <p>5 A. Yeah. It appears to be what I would have</p> <p>6 responded to.</p> <p>7 Q. Did you send the exact same letter to your</p> <p>8 knowledge to Eddie Ogletree?</p> <p>9 A. Yeah. My recollection I would have, yes.</p> <p>10 Q. In your second to last sentence in the second</p> <p>11 paragraph, you state that an accumulative system</p> <p>12 is being evaluated in the overall scope of the</p> <p>13 promotional process. They hope to have this</p> <p>14 completed by the end of this fiscal year.</p> <p>15 What did you mean by those two sentences?</p> <p>16 A. A Career Development Plan that the fire division</p> <p>17 is working on.</p> <p>18 Q. Did you mean by that that the Auburn Fire</p> <p>19 Department was looking into an accumulative</p> <p>20 system for promotions?</p> <p>21 A. Yes.</p> <p>22 Q. Meaning --</p> <p>23 A. As part of the Career Development Plan for each</p>
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<p>1 Stephens, and I'll ask you if you've ever seen</p> <p>2 that document.</p> <p>3 A. Yes, sir.</p> <p>4 Q. You have seen this?</p> <p>5 A. Yes.</p> <p>6 Q. You received it?</p> <p>7 Had you had any discussions with</p> <p>8 Mr. Ogletree or Mr. Stephens about this</p> <p>9 grievance before they sent you this letter?</p> <p>10 A. I don't recall having any discussions, no.</p> <p>11 Q. As a result of this letter, do you recall having</p> <p>12 a meeting with Mr. Stephens and Mr. Ogletree?</p> <p>13 A. No, I don't recall having a meeting.</p> <p>14 Q. Have you ever had a face-to-face meeting with</p> <p>15 these gentlemen specifically related to their</p> <p>16 complaints in Plaintiff's Exhibit 15?</p> <p>17 A. Not that I recall.</p> <p>18 (Plaintiff's Exhibit 16 marked for</p> <p>19 identification.)</p> <p>20 Q. What I'll mark as Plaintiff's Exhibit 16 is a</p> <p>21 letter that I believe you sent to Lieutenant</p> <p>22 Stephens. If you could, identify that for me.</p> <p>23 A. Yes, I recall this.</p>	<p>1 rank.</p> <p>2 Q. I'm sorry. What?</p> <p>3 A. Promotion for each rank, for each position.</p> <p>4 Q. And what specifically do you mean when you say</p> <p>5 accumulative?</p> <p>6 A. Well, the Career Development Plan, as I</p> <p>7 understand it, each position would have certain</p> <p>8 requirements in that position, certain</p> <p>9 certifications, educational requirements. And</p> <p>10 then to go to the next -- or be eligible for a</p> <p>11 promotion to a higher rank, that you would meet</p> <p>12 those qualifications.</p> <p>13 Q. Does a cutoff test also -- is that also included</p> <p>14 in those qualifications?</p> <p>15 A. The document I recall does not mention a cutoff</p> <p>16 test.</p> <p>17 Q. So were you saying in this letter that the City</p> <p>18 was looking into promoting people based on</p> <p>19 something different than tests with cutoff</p> <p>20 scores?</p> <p>21 MR. MORGAN: Object to the form.</p> <p>22 A. Well, as I recall this, it was the Career</p> <p>23 Development Plan, CDP, that the fire division</p>

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<p>1 was working on.</p> <p>2 Q. Do you recall during the meetings with CHW -- if</p> <p>3 I say that wrong -- CWH -- do you recall who</p> <p>4 during those meetings was promoting a score of</p> <p>5 70 as being the cutoff score?</p> <p>6 A. I don't recall any specific person promoting</p> <p>7 that other than it was discussed among everybody</p> <p>8 that was in the room about a cutoff score.</p> <p>9 Q. And you can't testify if anyone with the City of</p> <p>10 Auburn was the first person to suggest that</p> <p>11 there be a 70 cutoff score?</p> <p>12 A. I couldn't identify a person, no.</p> <p>13 Q. Are you familiar through your job with the City</p> <p>14 of Auburn with the work history of Mr. Stephens</p> <p>15 and Mr. Ogletree? It's okay if you're not. I'm</p> <p>16 just asking.</p> <p>17 A. Detailed parts of it, not specifically, other</p> <p>18 than I did -- since my position as the director</p> <p>19 looking at performance appraisals.</p> <p>20 Q. To your knowledge did they have satisfactory</p> <p>21 performance appraisals?</p> <p>22 A. As I recall they do, yes.</p> <p>23 Q. Are you aware of anything in their work history</p>	<p>1 A. To be honest I don't know that I could answer</p> <p>2 that. I'm not sure. I'm not a firefighter so</p> <p>3 I'm not sure.</p> <p>4 Q. You'll agree with me that all three</p> <p>5 African-Americans that applied for battalion</p> <p>6 chief failed to make it past the first step of</p> <p>7 the requirements; is that correct?</p> <p>8 A. That's true.</p> <p>9 Q. And that being -- the first step was a test with</p> <p>10 a cutoff score of 70, correct?</p> <p>11 A. That's true.</p> <p>12 Q. Will you also agree with me that the three</p> <p>13 African-Americans that failed to make it past</p> <p>14 the first step of the promotion process had been</p> <p>15 with the City of Auburn Fire Department for more</p> <p>16 years than the four individuals that were</p> <p>17 actually promoted to battalion chief?</p> <p>18 A. To my recollection I'd say that's correct.</p> <p>19 Q. Would you agree that since they had been there a</p> <p>20 number of years more than the individuals who</p> <p>21 were actually promoted to battalion chief that</p> <p>22 they had more actual on-the-job experience than</p> <p>23 those individuals?</p>
Page 31	Page 33
<p>1 with the City of Auburn that would have</p> <p>2 disqualified them for the promotion to battalion</p> <p>3 chief?</p> <p>4 MR. MORGAN: Object to the form.</p> <p>5 A. No.</p> <p>6 Q. You talked about the promotional process a</p> <p>7 moment ago, and you'll agree with me that the</p> <p>8 test with a cutoff score was a component of the</p> <p>9 process to be promoted to battalion chief in</p> <p>10 2006; is that correct?</p> <p>11 A. Correct.</p> <p>12 Q. And what other components of that process</p> <p>13 existed to your knowledge for the promotion?</p> <p>14 A. They had the thing they called the hot seat.</p> <p>15 They had a situational scenario. It seems there</p> <p>16 was another component, but I can't remember what</p> <p>17 it was. It seems like there were three</p> <p>18 components.</p> <p>19 Q. Is it your understanding that an applicant's</p> <p>20 performance in the situational part of the</p> <p>21 process, that their performance was largely</p> <p>22 based on their experience as firefighters?</p> <p>23 MR. MORGAN: Object to the form.</p>	<p>1 MR. MORGAN: Object to the form.</p> <p>2 A. I could agree that they had been a firefighter</p> <p>3 longer. I'm not sure how you define experience.</p> <p>4 Q. I'm not going to offer this exhibit during your</p> <p>5 deposition, but have you seen the two memos that</p> <p>6 were sent out back to back in advance of the</p> <p>7 promotion where one said that only</p> <p>8 nonprobationary lieutenants could apply and then</p> <p>9 several days later a second one that said</p> <p>10 everybody can apply: nonprobationary,</p> <p>11 probationary, and probationary, nonprobationary</p> <p>12 firefighters could apply also? Did you see</p> <p>13 those two memos?</p> <p>14 A. Yes.</p> <p>15 Q. Were you involved in the decision to allow</p> <p>16 nonprobationary lieutenants and probationary and</p> <p>17 nonprobationary --</p> <p>18 Were you involved in the decision to allow</p> <p>19 probationary lieutenants and nonprobationary and</p> <p>20 probationary firefighters to apply for the</p> <p>21 battalion chief position?</p> <p>22 A. Yes. I made -- Yes.</p> <p>23 Q. Was that a group decision or did you make that</p>



Page 34	Page 36
<p>1 decision yourself?</p> <p>2 A. I did not see anything in our policy or job</p> <p>3 description that would have excluded the</p> <p>4 individuals other than lieutenants, and I made</p> <p>5 that point and then the second memo was sent</p> <p>6 out.</p> <p>7 Q. So you saw the first memo. And for some reason</p> <p>8 that triggered you to go --</p> <p>9 A. No. Actually, the first memo went out as I</p> <p>10 recall. And then, if I'm not mistaken, I</p> <p>11 believe we got an application from Mr. Turner.</p> <p>12 When I got that or when I heard that, I looked</p> <p>13 and did not find anything that would preclude</p> <p>14 him from applying for the job.</p> <p>15 Q. So it's your testimony that as a result of</p> <p>16 his -- Mr. Turner's application, you went and</p> <p>17 looked at the policies and determined that there</p> <p>18 was nothing that would preclude him from</p> <p>19 applying for the battalion chief position,</p> <p>20 correct?</p> <p>21 A. As I recall, yes.</p> <p>22 Q. And so based upon that, you decided to allow</p> <p>23 probationary lieutenants, probationary and</p>	<p>1 Mr. Stephens where he told you that there was a</p> <p>2 problem --</p> <p>3 A. I believe we may have met after that meeting --</p> <p>4 at some point after that meeting.</p> <p>5 Q. At some point after the reclassification?</p> <p>6 A. No. After a meeting that we had with the three</p> <p>7 individuals that did not agree with the</p> <p>8 reclassification.</p> <p>9 Q. You're saying you and Mr. Stephens had a meeting</p> <p>10 after that meeting?</p> <p>11 A. As I recall it was after that meeting.</p> <p>12 Q. Can you tell us approximately when this meeting</p> <p>13 occurred?</p> <p>14 A. It may have been the same day. It could have</p> <p>15 been the next day. I think it was shortly after</p> <p>16 that.</p> <p>17 Q. Tell me what you recall was said during that</p> <p>18 meeting. It's just you and Mr. Stephens?</p> <p>19 A. I believe we went to my office. To be quite</p> <p>20 honest, I don't recall any details about the</p> <p>21 meeting. I don't recall anything -- I can only</p> <p>22 assume that there wasn't anything earth</p> <p>23 shattering, but I don't recall what we said or</p>
Page 35	Page 37
<p>1 nonprobationary firefighters all to apply for</p> <p>2 that position; is that correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Is it your position that the lieutenants who had</p> <p>5 been reclassified in February of '06 were</p> <p>6 probationary or nonprobationary lieutenants at</p> <p>7 the time of the battalion chief promotion?</p> <p>8 A. Non.</p> <p>9 Q. Why is that?</p> <p>10 A. Because they weren't promoted.</p> <p>11 Q. Mr. Reeves wasn't real familiar with the</p> <p>12 insignia that different ranking firemen wear.</p> <p>13 Are you familiar with those insignia?</p> <p>14 A. I am not.</p> <p>15 Q. Do you recall a meeting with Lieutenant Stephens</p> <p>16 sometime in 2005 which would have been before</p> <p>17 the reclassification of team leaders to</p> <p>18 lieutenant?</p> <p>19 A. A meeting before that?</p> <p>20 Q. Uh-huh (positive response).</p> <p>21 A. I don't recall that we had a meeting before</p> <p>22 that.</p> <p>23 Q. You don't recall the meeting you had with</p>	<p>1 what he said.</p> <p>2 Q. It's your testimony you don't recall</p> <p>3 specifically what was said during that meeting?</p> <p>4 A. No. I recall -- I believe we met in my office,</p> <p>5 but I don't recall any specifics about it, no.</p> <p>6 MR. HORSLEY: Let's take a few</p> <p>7 minutes.</p> <p>8 (Brief recess.)</p> <p>9 (Deposition concluded at</p> <p>10 approximately 2:10 p.m.)</p> <p>11 *****</p> <p>12 FURTHER DEPONENT SAITH NOT</p> <p>13 *****</p> <p>14</p> <p>15 REPORTER'S CERTIFICATE</p> <p>16 STATE OF ALABAMA:</p> <p>17 MONTGOMERY COUNTY:</p> <p>18 I, Pamela A. Wilbanks, CCR, Registered</p> <p>19 Professional Reporter, and Commissioner for the State</p> <p>20 of Alabama at Large, do hereby certify that I reported</p> <p>21 the deposition of:</p> <p>22 WILLIAM HOWARD JAMES</p> <p>23 who was first duly sworn by me to speak the truth, the</p>



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1 of:  
 2 EDDIE OGLETREE, an individual,  
 3 GERALD STEPHENS, an  
 4 individual,  
 5 Plaintiffs,  
 6 Vs.  
 7 CITY OF AUBURN, a municipality  
 8 in the State of Alabama, LARRY  
 9 LANGLEY, an individual, LEE LAMAR,  
 10 an individual, BILL HAM, JR., an  
 11 individual, STEVEN A. REEVES, an  
 12 individual, BILL JAMES, an  
 13 individual, CHARLES M. DUGGAN, an  
 14 individual, and CORTEZ LAWRENCE,  
 15 an individual,  
 16 Defendants.  
 17 In The U.S. District Court  
 18 For the Middle District of Alabama  
 19 Eastern Division  
 20 3:07-CV-867-WKW  
 21 on Wednesday, July 30, 2008.  
 22 The foregoing 37 computer printed pages  
 23 contain a true and correct transcript of the

I, William Howard James, hereby certify that  
 I have read the foregoing transcript of my deposition  
 given on Wednesday, July 30, 2008, and it is a true and  
 correct transcript of the testimony given by me at the  
 time and place stated with the corrections, if any, and  
 the reasons therefor noted on a separate sheet of paper  
 and attached hereto.

\_\_\_\_\_  
 William Howard James

SWORN TO AND SUBSCRIBED before me this \_\_\_\_  
 day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
 NOTARY PUBLIC

8/5/08  
 Mr. William Howard James  
 8371 Lec Road 188  
 Waverly, AL 36879  
 IN RE: OGLETREE AND STEPHENS VS. CITY OF AUBURN, ETC.  
 Dear Mr. James:  
 Enclosed is a condensed copy of the transcript of your  
 deposition taken on Wednesday, July 30, 2008. Please read  
 the transcript and make any corrections on the correction  
 sheet provided specifying the page and line number of  
 each correction.

You will find the original signature page attached to the  
 front of the transcript. Even if there are no  
 corrections, please sign the original signature page and  
 have your signature notarized.

Please return the signature page and correction sheet  
 within thirty days. The list of corrections will be  
 attached to the original deposition and all parties will  
 be notified of any changes.

Thank you for your prompt attention to this matter.

Sincerely,

Pamela A. Wilbanks, CCR, ACCR#391, RPR

cc: Mr. Richard Horsley  
 Mr. Randall Morgan  
 Mr. William Hancock

Page 39

1 examination of said witness by counsel for the parties  
 2 set out herein. The reading and signing of same is  
 3 hereby not waived.  
 4 I further certify that I am neither of kin nor  
 5 of counsel to the parties to said cause nor in any  
 6 manner interested in the results thereof.  
 7 This 5th day of August 2008.

\_\_\_\_\_  
 Pamela A. Wilbanks, ACCR #334  
 Expiration Date: 9-30-2008  
 Registered Professional Reporter  
 and Commissioner for the State  
 of Alabama at Large



## AlaFile E-Notice

**01-CV-2007-901537.00**

Judge: G. WILLIAM NOBLE

To: ROWE STEPHEN A  
steve.rowe@arlaw.com

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## NOTICE OF COURT ACTION

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

ADVANCED MACHINE AUTOMATION, INC. v. GREIF, INC  
01-CV-2007-901537.00

A court action was entered in the above case on 8/5/2008 2:22:49 PM

**C001 ADVANCED MACHINE AUTOMATION,  
MOTION TO CONTINUE**

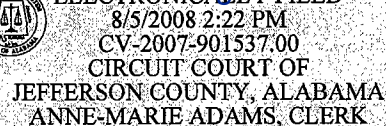
[Attorney: VEAL WILLIAM C]

Disposition: GRANTED  
Judge: GWN

Notice Date: 8/5/2008 2:22:49 PM

**ANNE-MARIE ADAMS**  
**CIRCUIT COURT CLERK**  
JEFFERSON COUNTY, ALABAMA  
JEFFERSON COUNTY, ALABAMA  
BIRMINGHAM, AL 35203

205-325-5355  
anne-marie.adams@alacourt.gov



**Defendant.**

**CASE NO. CV 07-901537-GWN**

The Plaintiff's Motion to Continue is GRANTED. This cause is hereby continued from its present setting of October 6, 2008 and is hereby reset for trial on **January 5, 2009 at 9:00 a.m.**

DONE and ORDERED this 5<sup>th</sup> day of August, 2008.

/s/ G. William Noble  
G. WILLIAM NOBLE  
CIRCUIT JUDGE

GWN/pc  
cc: All parties